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VINDICATION

OF THE

RIGHTS AND TITLES,

POLITICAL AND TERRITORIAL,

OF

ALEXANDER, EARL OF STIRLING & DOVAN,

AND

LORD PROPRIETOR OF CANADA AND NOVA SCOTIA.

BY JOHN L. HAYES,

COUNSELLOR AT LAW.

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A country larger than Great Britain and France united was given, in the early part of the 17th century, with powers almost regal, to Sir William Alexander, of Menstrie, a descendant of Somerled, king of the Isles.

But Sir William Alexander was less distinguished for birth than for ability and accomplishments. An ornament of the court of James the 6th, of Scotland, who called him his philosophical poet, he followed that Prince to London, and published a volume of poems which placed him in the highest rank among Scotch poets. He was created a knight, a gentleman of the chamber, and a privy councillor. From that moment he renounced literary glory to occupy himself with politics and government.

James 1st had granted letters patent to a company for the establishment of an English colony in North America; but this company, terrified at the difficulty of the enterprise, wished to give it up, when Sir William Alexander, more courageous, obtained a grant of Nova Scotia, with the title of Hereditary Lieutenant, by charter dated Windsor, 10th September, 1621.

In a few years Sir William Alexander was made a Scotch peer, as Lord Alexander of Tullibodie, Viscount of Canada, Viscount and Earl of Stirling and Earl of Dovan, and invested with immense territories in the new world and large estates in Scotland.

The following royal charters under the great seal were granted to the Earl of Stirling, and were recognised and confirmed by act of Parliament in the presence of King Charles the 1st. These are all on record at Edinburgh:

10th September, 1621. Original charter of Nova Scotia.

12th July, 1625. Charter of Novo Damus of the lands, lordship and barony of Nova Scotia.

3d May, 1627. Charter of the country and dominion of New Scotland.

2d February, 1628. Original charter of Canada, including fifty leagues of bounds on both sides of the River St. Lawrence and the Great Lakes.

There were other patents and charters, among them letters patent of April 22d, 1635, "for a tract of Maine and the Island of Stirling, (Long Island,) and islands adjacent;" and the charter of Novo Damus, dated 7th December, 1639, which was a re grant of all the lands and honors which the Earl had at any time received from James 1st and Charles 1st. This charter is the only one attempted to be disputed. But its existence is wholly unnecessary to support the present Earl's title to the lands and honors.

These charters gave the Earl of Stirling vast political and administrative powers. He was made his Majesty's hereditary lieutenant general over the whole countries of Nova Scotia and Canada. He was also made justice general, high admiral, lord of regality, and hereditary steward. The power was conferred upon him of making officers of state and justice, of conferring titles of honor, of coining money, and the privilege of making laws concerning the public state, good and government of the country. He had the power of appointing one hundred and fifty baronets, called Baronets of Nova Scotia, who were to take precedence of all other baronets. Under this power the first Earl actually made over one hundred baronets; nearly fifty of the present baronets in Great Britain hold their titles from patents granted by the first Earl of Stirling.

It is proper to remark that the expenses of the first colonization had already been incurred by Sir William Alexander before the first charter of 10th September, 1621, was granted by James 1st, and that is the reason alleged in the charter for the grant: "For these causes, as well as on account of the faithful

and acceptable service of our beloved councillor, Sir William Alexander, knight, to us rendered and to be rendered, who, first of our subjects, at his own expense, endeavored to plant this foreign colony, and sought out for colonization the divers lands circumscribed, &c., we do grant, &c."

This immense grant was therefore not a mere favor; it was a reward for efforts made and expenses incurred in colonizing these great wastes of the new world.

Soon after obtaining the charter of 10th September, 1621, the Earl devoted the whole of his large fortune to the enterprise of colonization, where every thing was to be created; and the grant is less extraordinary since the King had no money in his treasury, nor a navy, which was only created in the time of Cromwell. The country was inhabited by savages and threatened by France, which claimed it by reason of the discovery of Canada by Jaques Cartier in 1534. The paramount claim of the English crown was founded on the discovery of the continent of North America by Sebastian Cabot in 1497, who took possession in the name of Henry 7th. The vast expenses of colonizing and fortifying, all carried on under the superintendence of the Earl's eldest son, who inhabited during twelve years Port Royal, in Nova Scotia, as governor of the new colony, was worthy of recompense; and when, through the inability of the King to aid the Earl, the country at length fell into the hands of the French, £10,000 sterling was granted to compensate him for his losses. This grant expressly stated, "it is no wise for quitting the title, rights, or possession of New Scotland, or any part thereof, but only for the satisfaction of the losses aforesaid." This sum has never been paid, and is still due, with interest thereon, to the heirs of the first Earl.

Through the surrender just mentioned Nova Scotia became Acadia, and only finally returned to England at the peace of 1763.

During the French occupation Lord Stirling and his sons vainly attempted resistance. The rights of the family were

necessarily suspended. Nevertheless, in the various negotiations and treaties between England and France, they have been repeatedly brought forward by England in support of her claim of sovereignty; the royal charters and legislative acts in favor of the Earl of Stirling and his heirs being her strongest ground of argument. The British Government produced these charters before the late King of the Netherlands, when he sat as arbitrator on the question of the northeastern boundary.

The troubles which desolated the three kingdoms during the 17th century, overturned rights and titles of property, ruined some ancient families, and impoverished others. The rich domains of the Stirlings in Scotland, partly on account of debts incurred by the family to carry out the schemes of colonization, and partly on account of the civil and religious agitations of that period, passed into other hands.

Before proceeding to detail the circumstances which have occasioned the delay in the assertion of the claims of the Stirling family, we will very briefly allude to the fact that during the last century pretensions were vainly set forth to the lands and titles of this family. Canada was still under the French rule when, in 1758, William Alexander, afterwards a general in the American army during the revolution, appeared in Great Britain, and, assuming the title, presented himself as heir to the lands and honors. Gen. Alexander was probably descended from some one of the many Alexanders of the clan brought to Nova Scotia by the first Earl of Stirling, all of whom were driven to the south by the French. The tradition of relationship to the Earl doubtless induced him to set up his claim. It is sufficient here to say, that he took up the title and bore it without having gone through the proper legal steps or formalities to support it, and that he did not claim to descend from the first Earl, but from a supposed uncle, which descent could have given him no title to the lands or honors. He presented his claim to the House of Lords, which no Scotch peer was required to do; but the fact of the existence of lineal de-

scendants of the first Earl, who were then mere youths in college, being notorious, the House of Lords rejected his claim. He re-embarked for America, where he died without issue male, in 1783.

The last male descendants of William, first Earl of Stirling, were in consequence of the civil wars, religious troubles, proscriptions, confiscations, and revolutions which agitated England during more than a century, a Presbyterian minister at Birmingham, who died in 1765, a man greatly honored for his piety; and Benjamin Alexander, 8th Earl of Stirling *de jure*, a learned physician who died in London in 1768. The rights of Benjamin passed to his eldest sister, for, by the Scottish law of descent, as well by the limitations of the charters, *the eldest heir female of the last heir male takes the inheritance*. This sister dying unmarried in 1764, the rights finally passed to another sister, Hannah Alexander, *de jure* 2nd Countess of Stirling. The last heiress of the titles and rights of the house of Stirling, married in 1769 William Humphrys of the Larches, in Warwickshire. Of this marriage, out of eight children, three only survived, Alexander 9th and present Earl, and two daughters.

Thus the rights of the family were, during fifty years, in female heirs, or, in other words, during that period the circumstances of the family were such that no steps could be taken to pursue rights which, without being disregarded or contested, required to be established. But before the transmission of these rights to females, John and Benjamin Alexander were too exclusively occupied with their education and establishment in their professions even to take up their rank. The earlier assumption of the honors of the family was prevented by other obvious reasons.

1st. Because the old Scotch estates had, during the civil wars, been seized by others, who, thus powerful, were ready to defend them at all hazards.

2d. Because Canada and Nova Scotia were only fully restored to England at the peace of 1763, a short time previous

to the deaths of both John and Benjamin, last heirs male of the first Earl.

3d. Because the papers of the family had been scattered, lost, or stolen.

4th. Because during the wars between England and France under the republic, the present Earl and his father were detained in France as prisoners of war with thousands of English, and it was only after a detention of twelve years, and after making many efforts to recover considerable sums of money which had been confiscated there, that he returned in 1815 to his own country.

5th. Finally, because it was necessary, before commencing so important an affair, to have ample means, which though abundant at first might become insufficient in the case of a long resistance.

As soon as the necessary arangements were completed, the present Earl of Stirling proceeded to take the proper measures for the re-establishment and acknowledgment of his rights.

He was fortified with evidence to prove the descent of the titles and lands, as follows :

William, the first Earl, died in February, 1640, and was succeeded by his infant grandson, the only son of his deceased eldest son, William, 2d Earl. He survived his grandfather six months, and died under eight years of age. He was succeeded by his uncle Henry, third Earl, who was the eldest surviving son of the first Earl; Henry, third Earl, died in 1644, and was succeeded by his only son, Henry, fourth Earl. Henry, fourth Earl, died in 1690, leaving four sons, Henry, eldest and fifth Earl, William, Robert, and Peter, who died before their eldest brother. At the death of Henry, fifth Earl, without issue in 1739, the succession went to Rev. John Alexander, grandson and heir male of John, fourth son of the first Earl, who died in Ireland, in 1666. The Rev. John Alexander, sixth Earl *de jure*, died at Dublin, 1st November, 1743; four years after the death of Henry, fifth Earl. The

Rev. John Alexander, sixth Earl *de jure*, left four children, John, 7th Earl of Stirling *de jure*, who died unmarried, 29th December, 1765. Benjamin, eighth Earl *de jure*, who died unmarried, 18th April, 1768. Mary, countess of Stirling *de jure*, who succeeded upon the extinguishment of all the heirs male, and died unmarried, April 28th, 1794; Hannah, second countess of Stirling, wife of William Humphrys, who died 12th September, 1814. Upon the death of his mother, Alexander, the ninth and present Earl both *de facto* and *de jure*, succeeded to the titles and estates of the family.

We do not propose here to furnish the evidences of descent, or to detail historically and in the order of time, the steps which were taken by the present Earl of Stirling to establish his rights. We propose to show that—

I. It has been judicially established, by courts of competent jurisdiction that the present Earl of Stirling is lineally descended from the first Earl of Stirling, and the real heir to his title and estates.

II. The title and position of the present Earl of Stirling have been officially recognised on the most solemn occasions in England and Scotland.

I. Judicial recognition.

By the Scottish law certain judicial proceedings are particularly and especially provided for the trial of the fact of heirship. He who is truly heir of a deceased person, before he can have an active title to the estate which was in his ancestor, must be served and *retoured* heir by an inquest. These services proceed upon a brief, called a brief of inquest, and are of two kinds, general and special. The general service proceeds on a brief, issuing from the Scotch chancery, directed to a judge there, and must be proclaimed at the head borough of the jurisdiction within which the heir is to be served. After the expiration of fifteen days, the service is tried before the Judge. The jury to try the heirship consists of fifteen persons, who are sworn in by the judge to act impar-

tially. The apparent heir produces to the jury his claim as heir, and they may proceed, not only on the evidence offered by the claimant, but on the proper knowledge of any two of themselves, for they are considered both in the light of judges and witnesses. The point of inquiry is, whether the claimant be the next and lawful heir of the deceased. If it appear to the jury that the claim is proved, they *serve* the claimant, *i. e.*, they declare him heir to the deceased by a sentence, or service, signed by the chancellor of the jury, and attested by the judge. The clerk to the service then prepares a return of the claim of service, with the verdict of the jury to the chancellor; which after being thus recorded and rendered in the chancery books, is called the *retour*. The general service is completed as soon as it is retoured, and carries to the heir the complete right of all the heritable subjects on which the ancestor had not taken seisin. These services are not traversible, or cannot be denied, but must be taken as true, until by regular process of reduction, at the suit of *a better claimant*, they are falsified.

Lord Stirling has been returned by this due form of law:

1st. On the 7th of February, 1826, heir to his deceased mother, Hannah, Countess of Stirling, as heiress to her brother, Benjamin, eighth Earl of Stirling, *de jure*, who was last heir male of the body of William, first Earl of Stirling.

2dly. On the 11th of October, 1830, nearest and lawful heir in general of his great-great-great-grandfather, William, first Earl of Stirling.

3dly. On the 30th May, 1831, nearest and lawful heir of tailsie and provision to his ancestor, William, first Earl of Stirling.

When the heir desires to perfect his title to special subjects, in which the ancestor died vested and seized, he obtains what is called a special service. The special service proceeds upon a brief issued from the chancery, directed, in cases like the present, to the sheriff depute of Edinburgh, or his substitute. The service proceeds in the usual form; the jury of fifteen

being appointed, the claim made, and the evidence offered. The evidence and proof required are more ample in this than in the general service. The principal points to be proved are, that the ancestor is dead, and the precise time of his death, and that he died seized of the land specified in the claim, in whose hands the fee is at the time of service, &c. These heads being proved, the jury serve the heir. An extract of the proceedings returned into chancery, is said to be the retour of the heir's service.

4thly. By a special service, such as has been described, *the present* Lord Stirling was, on the 2d of July, 1831, served as nearest and lawful heir in special of William, first Earl of Stirling, to take up the fee of the lands comprised in the aforesaid charters.

The following extracts from this important act of court are taken from the records, register house, Edinburgh:

"The 10th of June, 1831, a brief was issued forth of his Majesty's chancery, directed to the sheriff depute of the sheriffdom of Edinburgh, specially constituted as aforesaid, at the instance of the said Alexander, Earl of Stirling, &c., for precognoscing him nearest and lawful heir of the said deceased William, Earl of Stirling, his great-great-great-grandfather, in all and sundry lands, and others in which the said William, Earl of Stirling, died last vest and seized as of fee," &c.

"William Swanston, officer of the said sheriff, with witnesses, passed to the market cross of the burgh of Edinburgh, &c., upon the 15th day of June last passed, being a market day, and in open market time duly and openly proclaimed and executed the brieves in due form of law."

"On the 2d July, 1831, 'within the parliament or new session house,' at Edinburgh, 'in the court-room of the first division of the court of session, in presence of George Tait, esquire, sheriff substitute of the sheriffdom of Edinburgh, as sheriff of the sheriffdom of Edinburgh,' &c. Thomas Christopher Banks, esquire, as procurator and mandatory of the

Earl of Stirling, having demanded that he should be served and cognosced nearest and lawful heir of the said deceased William, Earl of Stirling, his great-great-great-grandfather, in all and sundry the lands, continents, and islands situate and lying in America, and others therein particularly described, &c." "Produced the writs after mentioned, viz., book the 51st of the register of the great seal, containing the record of a charter of novo damus, under the said seal, of date the 12th day of July, in the year 1625, made, given, and granted by his Majesty, Charles the First, in favor of the said William, Earl of Stirling, (then and therein named Sir William Alexander,) of the lands, barony, and lordship of Nova Scotia, in America," &c.; "secundo, extract registered instrument of seisin, following upon the precept in the said charter, in favor of the said William, Earl of Stirling, of date 29th of September, in the said year 1625, recorded in the general register of seisins, &c.; and lastly, general retour of the service expede before the bailies of the burgh of Canongate, of the said Alexander, Earl of Stirling, as heir of the said deceased William, Earl of Stirling, his great-great-great-grandfather, which retour is dated the 11th day of October, 1830, and duly retoured to chancery," &c. Thus, "the sheriff substitute of the sheriffdom of Edinburgh, as judge aforesaid, caused the said Lindsay Rae, officer of the court, to call peremptorily and openly in judgment, all parties having, or pretending to have, interest, which being accordingly done, and none compearing to object against the service of the said brieve, and lawful time of day being wasted, the said procurator and mandatory protested *contra omnes comparentes*, that they should be silent forever after; and also desired that the said claim, and writs produced for verifying said claim, might be referred and admitted to the knowledge of the inquest before named, and the said sheriff substitute of the sheriffdom of Edinburgh, as judge aforesaid, finding the said desire to be just and reasonable, he admitted thereof, and remitted the said matter to the know-

ledge of the inquest; and who being all solemnly sworn by the said judge, they made faith *de fideli administratione*, and then elected the said Patrick Robertson, Esq., advocate, to be their chancellor; and thereupon the said claim was openly and publicly read, and compared with the aforesaid writings produced for vouching and verifying thereof; and thereafter the said sheriff substitute of the sheriffdom of Edinburgh, as judge aforesaid, caused the said Lindsay Rae, officer of court, call again thrice peremptorily in judgment at the most patent door of the said new session house, all parties having, or pretending to have interest; which being accordingly done, and none compearing to object, the said procurator and mandatory again protested *contra omnes non comparentes* that they should be ever thereafter silent; and then they, the said worthy persons of inquest, ALL IN ONE VOICE AND WITHOUT VARIANCE, by the mouth of their said chancellor, found the aforesaid claim sufficiently instructed and proven, and therefore *served and cognosced the said Alexander, Earl of Stirling, &c., nearest and lawful heir in special of the said deceased William, Earl of Stirling, his great-great-great-grandfather, in all and sundry the lands and others contained in the said claim, &c., &c.*

On the 8th of July, 1831, in virtue of this special service, Lord Stirling was, by precept from his Majesty, (William IV,) directed forth of his said chancery in Scotland, to the sheriff of Edinburgh, infeft in the whole county of Nova Scotia, including New Brunswick and Canada, and is therefore placed in the legal occupation and possession of all the lands, rights, and privileges conveyed by these charters, not granted by his ancestors or alienated by the Government. Seisin must ordinarily be taken on the ground of the lands contained in the precept. But, by the charters, the American property is made part of the county of Edinburgh for the purposes of seisin, which is directed to be taken, and was taken at the castle of Edinburgh as the most conspicuous place. This remarkable

exception to the rule as to taking seisin on the ground, is thus alluded to in Erskine's Institutes, B. II, Tit. III, § 36. "This rule may, in cases of necessity, be dispensed with by proper authority, as it was in the seisin of Nova Scotia and Canada in favor of VISCOUNT STIRLING, which, by the King's special appointment, was taken at the gate of the castle of Edinburgh, and afterwards ratified by Parliament, 1633."

Thus all the formalities required by the Scottish law have been fulfilled by the present Earl of Stirling. He has performed every act prescribed by ancient Scottish customs, not only to establish the fact of his heirship, but to vest in himself the actual possession of the estates of his ancestor. By all legal forms he has recovered his ancient patrimony. He is at this moment in actual possession by law of his estate and title.

Although the verdicts of these four juries are legally conclusive as to the question of heirship, we may observe, that the sworn conclusions of these sixty men, who have been called to pass upon this question, possess the highest moral weight in view of their individual fitness for such an investigation. To show the character of the men who have passed their judgment upon Lord Stirling's rights, we subjoin a list of the jury on the 4th or special service.

4th or special service 2nd July, 1831, before George Tait, Esq., sheriff, substitute of the sheriffdom of Edinburgh, as sheriff specially constituted, in the court-room of the first division of the court of session.

1. Patrick Robertson, Esq., advocate, (now Lord of session,) chancellor of the jury.
2. James Welsh, Esq., advocate of Edinburgh.
3. David Johnston, Esq., M. D. do.
4. John Renton, Esq., writer to the Signet of Edinburgh.
5. James Balfour, Esq., do. do. do.
6. James McDonell, Esq., do. do. do.
7. John Dickie, Esq., do. do. do.
8. Henry Ingliss, Esq., do. do. do.

9. James Souber, Esq., writer to the Signet of Edinburgh.
10. John Stirling, Esq., accountant do.
11. John Adams, solicitor of the Supreme courts do.
12. John Philips, do. do. do. do.
13. Thomas Ranken, do. do. do. do.
14. William Wallace Sibbald, Esq., solicitor of the Supreme courts of Edinburgh.
15. Joseph Low, writer, (attorney,) of Edinburgh.

It is impossible to believe that these fifteen gentlemen, two of whom were eminent advocates, ten others lawyers, well known and respected, a distinguished physician of Edinburgh, a member of an ancient baronial family, and a respectable accountant, would "*unanimously, and without variance,*" have sustained claims which had not the strongest foundation in law and justice.

The verdicts of these juries have not been finally reversed, reduced or set aside, although most arbitrary and illegal proceedings, of which we shall speak hereafter, have been commenced for this purpose at the instance of the Government. Now, it is well settled, that when a court having competent jurisdiction has pronounced upon the *status*, the state or condition of a person, the decree is to be deemed of universal authority and obligation. In suits at law in the provinces or in this country, where Lord Stirling's rights are brought in question, it will only be necessary for him to produce authenticated copies of the records of these services, and to show that he is the person who obtained the verdicts, and the question of heirship must be taken as established.

II. Official recognition.

Having shown the judicial recognition of Lord Stirling's rights, we have proved all that is necessary for the assertion of these rights in Great Britain, the British North American Colonies, or this country. But as it may be interesting to compare the former official acts of the authorities in England and Scotland with the more recent acts of the officers of the

Crown, we will proceed to show that the position and title of the present Earl of Stirling have been officially recognised in Scotland and England on the most solemn occasions.

Lord Stirling, it must be remembered, is a peer of Scotland, and his case must be distinguished from a claim to an English peerage. The party who claims to be an English peer must in all cases apply by petition to the sovereign for his writ of summons to Parliament, the English peers being summoned singly by the Sovereign's writs; whereupon his application is referred to the House of Lords, or it may be to some of the judges or law officers. But neither lineal or collateral heirs of Scottish peerages are bound to prove their right before the House of Lords. Wallace, one of the most eminent legal authorities upon questions of peerage succession in Scotland, says, in reference to Scotch dignities:

"Honors are not enjoyed by any person to whom they devolve under the will or right of inheritance of his ancestor, but are derived, by every possessor of them, solely from the favor of the King, as if each successive individual possible to come into being, and inherit them, had been distinctly foreseen, particularly named, and originally called in the royal charter which granted them. In consequence, a peer requires not a service, a conveyance, or the using of any form to acquire a dignity that is cast upon him by descent, but on the death of his ancestor is fully vested in it merely by existence, and may assume it at pleasure."

(A disquisition on the right of jurisdiction in peerage successions, particularly in the peerage of Scotland.)

The authority and grounds upon which the Peer has taken on himself the honors are open to be questioned by any one who can allege, and, after alleging, clearly prove, that he or she has a *nearer interest* and better title than the party, &c., assuming them.

Since the Union of 1707, the right in all peers of Scotland of exercising peerage privileges has consisted in obeying the

Royal proclamation to attend at Holyrood House for the election of sixteen peers to represent the whole body in the Parliament of Great Britain, either on a General Election, or on a vacancy occurring. The Royal proclamation on this occasion may be compared with the writ of summons of an English peer to Parliament. If the Scotch peer takes his seat by virtue of it, and be not protested against, but has his place and precedence allowed him, the oaths administered, and his vote received unanimously by the Lords present, he is to all intents and purposes invested in the enjoyment of his peerage honors, as much and as perfectly as an English peer, who shall have taken his seat in the House of Lords under a writ of summons without counter claim of any other peer objecting thereto, or pretending better right.

In pursuance of the Scottish law, usage, and precedent, Lord Stirling, having taken advice of learned counsel as to the course to be pursued, publicly resumed his title on the second of June, 1825. The peers of Scotland were commanded by Royal proclamation to assemble at the Palace at Holyrood House on the second of June following, to elect one of the sixteen representative peers. The Earl of Stirling set off for Edinburgh, and appeared at the day of election. It was well known to the peers assembled that the Rev. John Alexander, of Dublin, sixth Earl, grandfather of the present Earl, was entitled to his rank, so that as soon as Lord Stirling announced himself as his grandson, he was congratulated on the resumption of his title. He was received at Holyrood House *as a peer*, and was immediately ushered into the private room to wait there, with the other peers, the time of proceeding to the gallery. When the Lord Provost and magistrates entered to announce that all was ready for forming the procession to the gallery, the Earl of Glasgow stepped forward, and gave the strongest proof of his own feelings, as well as those of the other peers present, by requesting that he would take precedence as the *premier*, by the date of the creation of his Earldom, among those assem-

bled. Lord Stirling took his place at the table, and on being called, took the oaths, and voted without protest or objection of any kind, which proves that his rights were already acknowledged by public opinion. He gave his vote for Viscount Strathallan, who was elected.

Since that period the Earl of Stirling has voted at several general elections, exercising all the privileges of the peerage, and triumphing without difficulty over the ill will of a very small number of hostile peers, whom the recognition of his rights alarmed, on account of the Scottish estates of his family which had long before passed into other hands. On the list of sixty-four peers, who voted at the general election of the second of September, 1830, the *Earl of Stirling is* inscribed between the Earl of Dumfries and the Earl of Elgin, and this list, transcribed from the register of Edinburgh, was printed in London by order of the House of Lords.

We again find the *Earl* of *Stirling* set down after the Earl of Lauderdale upon the list of the sixty-one peers of Scotland who voted at the general election of 3d June, 1831 ; a list which was also printed, and which like the preceding is extracted "from the records of the general register house of his Majesty at Edinburgh."

Finally, in the great roll of the peers of Scotland, extracted from the same register, and containing 159 peers, (viz., the Prince of Wales, *eleven* Dukes, *three* Marquises, *seventy-five Earls, seventeen* Viscounts, and *fifty-two* Lords,) the *Earl of Stirling* may again be seen placed between the Earls of Dumfries and Elgin. This general register was drawn up by virtue of an "order of the right honorable the Lords spiritual and temporal in Parliament assembled, of the 23d of August, 1831, requiring that there be laid before the House a copy of the union roll of the peerage of Scotland, and a list of all those peers who voted at all general elections since the year 1800." The printing of this roll was ordered by the same House the 3d of September, 1831.

We therefore see on the register of the King's general register house at Edinburgh, the Earl of Stirling three times entered upon the list of the peers who voted at one single election and at two general elections in 1825, 1830, and 1831; lists which have been returned to the upper House, and printed by its order, which are kept on its records and published in its minutes!

We see the Earl of Stirling's name inserted npon the great roll of the peers of Scotland, in 1831, a roll inscribed in the archives of the King at Edinburgh, drawn up by order of the House of Lords, entered upon its register, and transcribed upon its minutes! Since that period the Earl of Stirling has voted again at the general elections of 1835 and 1837. His name is also entered on the list of those peers who competed at those elections; lists recorded in the Royal archives of the upper House. From these lists results the proof that from 1825 to 1837, the present Earl of Stirling, always recognised in his rights, voted during a period of twelve years as a peer of Scotland without effective protest.

Thus recognised by his peers, and by the magistrates and courts of Edinburgh, Lord Stirling needed but one recognition, that of the Sovereign.

He had already received the recognition of Lord Chancellor Lyndhurst, before whom he had qualified (in the forms required by law, where a peer of Scotland is unable to attend *personally* an election of peers) to vote by signed list. Some delay having been occasioned by the Chancellor's wish to be fully satisfied of the Earl's right to execute his peerage privileges, and his Lordship having summoned council to attend him, before he would sign the necessary certificate, when satisfied, he wrote the following note to Lord Stirling:

"The Lord Chancellor presents his compliments to Lord Stirling, and has directed the Great Seal to be affixed to the writ certifying his Lordship's having taken the usual oaths.

The Lord Chancellor will regret very much if the delay has put Lord Stirling to any inconvenience."

George street, 20th August, 1830.

Copy of the direction on the envelope of the note—

"The Earl of Stirling,
17 Baker street,
Portman square."

"Lyndhurst."

And sealed with his Lordship's arms.

In 1831, the highest law authority in Scotland, all the thirteen Judges, concurred with the Chancellor of England in recognising Lord Stirling's rank and title. An action was brought by the Earl in 1829 to recover a Scotch estate. The first objection, urged by the defendants to the plaintiff's right, was that he was not entitled to sue as a Scotch peer. The case having been argued before the thirteen judges, the Lord Chief Justice Clerk (the presiding Judge,) delivered the following reasons and judgment, of the former we give an abstract.

"It is stated positively that at the election of 1825 he voted *without protest;* and in the next place in 1830, went before the Lord High Chancellor of England to take the oaths, and was received and qualified as a peer, and certainly has got the usual certificates, and at the *last general election his vote was received without protest.* * * * * *

"We have pretty real evidence that my Lord Rosebery, who moved the resolutions, (resolutions upon which the opposition of the defendants was grounded,) was convinced, and well knew it did not apply to a case in this situation; I have not a doubt that his Lordship was quite satisfied that it did not apply to dormant peerages, and that they were not the claims which should have been excluded." &c. Then follows the judgment.

"Edinburgh, February 9th, 1831. The Lords having heard counsel on the first preliminary defence against the action, sus-

tain instance in the name of *Alexander, Earl of Stirling*, and appoint the case to be put on the Summar roll, that parties may be heard *quoad ultra*.

(Signed) D. BOYLE, *J. P. D.*"

Other judicial recognitions of Lord Stirling's title were about the same time made in England. In November, 1831, in an action before C. J. Tindal, of the court of Common Pleas, where an attempt was made to deprive Lord Stirling of his peerage privilege of filing common bail, and special bail had been insisted on by the plaintiff, Sir Henry Digby, the Chief Justice, Judges Gaselee, Bosanquet and Alderson, concurring, discharged the defendant from arrest without costs. The Chief Justice, after stating the provisions for the peerage of Scotland as to precedence at the election of representative peers, observed that Lord Stirling had three times voted on such occasions; first in 1825, then in 1830, and last in 1831; that no objection had been made till the last occasion, when a protest was made against his vote; "still, however, notwithstanding that protest he voted, and his vote was allowed to remain on record. It seems to me that the circumstance of the protest does not at all add to the invalidity of the title; but the voting in defiance of the protest rather has a tendency the other way." The same question was also decided in the same way on a similar occasion by Lord Tenterden, Chief Justice, of the King's bench.

On the 30th of August, 1831, Lord Stirling received an official and deliberate recognition of his title from the highest officers of the realm. On the 29th of August, a few weeks after receiving seisin and investiture of Nova Scotia and Canada, with all the vice regal powers and privileges granted by the charters, he petitioned the King in council to be allowed to do homage at the ceremony of the coronation of the King, William the 4th, as Hereditary Lieutenant and Lord Proprietor of Nova Scotia and Canada, or that his Majesty would be graciously pleased to dispense with the said homage under a *salvo jure* for any future occasion. This petition was presented with

the knowledge that the arrangement of the ceremonies had already been made. The next day the following letter was received:

"COUNCIL OFFICE, WHITEHALL, 30 *Aug.*, 1831.

"MY LORD: I am directed by the Lords of the Committee of Council, appointed to consider of his Majesty's coronation, to acquaint you that his Majesty has approved of a ceremonial on the occasion of the approaching coronation, in which your Lordship is assigned no part. I am also to acquaint your Lordship that you are at liberty to bring forward any claim of which you may deem yourself legally possessed, upon any future occasion.

"I have the honor to be, your Lordship's obedient servant,

(Signed) C. C. GREVILLE."

"The EARL OF STIRLING."

Thus *the King in council* recognised Lord Stirling in the most formal official communication that could have been made on the great occasion of his approaching coronation, as a peer of Scotland; and the following extract from the "*Times newspaper*," of 31st August, 1831, shows what members of the privy council were present when Mr. Greville was directed to write the preceding answer:

"The Lords of his Majesty's most honorable Privy Council held a meeting yesterday afternoon at the council office to make arrangements for the coronation of their Majesties.

"There were present the Archbishop of Canterbury, the Bishop of London, the Lord Chancellor, the Marquis of Lansdowne, Earl Grey, the Earl of Carlisle, Viscount Althorp, Viscount Melbourne, the Marquis of Cholmondeley, Lord Plunket, the Lord Chief Justice of the Common Pleas, the Vice Chancellor, the Comptroller of the Household, and the Duke of Richmond.

"Sir George Nayler, Garter King of Arms, the Master of the Lord Chamberlain's Office, and the Surveyor General of the Board of Works, were in attendance to receive instructions from their Lordships. Mr. Greville attended as clerk of the council."

It must be admitted that no recognition of a peer could be more complete and decisive than this *official act done after deliberation, upon a solemn public occasion, in the name of the King, by his council.* It cannot be recalled, it cannot be denied, it cannot be explained away. The proofs are in possession and recorded.

Lord Stirling having written to the late Earl Grey, as the King's prime minister, on the subject of his claims, in virtue of the special service and seisin which he had obtained, received the following reply:

"DOWNING STREET, *6th September*, 1831.

"MY LORD: I am desired by Lord Grey to acknowledge the receipt of your Lordship's letter, and to inform your Lordship that he has transmitted it to Viscount Goderich, the secretary of state for the colonies, as it relates to matters under that department.

"Lord Grey desires me to express his thanks to your Lordship for the terms of confidence and good will towards his Majesty's Government which your Lordship's letter contained.

" I have the honor to be, my Lord, your Lordship's obedient servant.

(Signed) CHARLES WOOD."

"The Earl of Stirling, &c.

This letter was directed by Lord Gray himself thus—

"The Earl of Stirling,

"20 Baker street,

"Portman square."

"Grey."

And sealed with his Lordship's small seal.

Thus the Lord Chancellor Lyndhurst, Earl Grey, the Prime Minister, the Lords of the committee of council, in the King's name corresponded officially with the Earl of Stirling, and addressed him by his title. Thus was he acknowledged in London as in Edinburgh, in Downing street and Whitehall as at Holyrood.

The attention of the Government was not yet roused to the formidable extent of his claim, and consequently no official forms were omitted in the courteous expressions of the ministerial communications.

It is evident that if at this period the Royal charters had conferred nothing more than titles of nobility and peerage, and if the Earl of Stirling had limited his views to obtaining the Government recognition of his genealogy and descent, as well as his title of Earl and peer of Scotland, he would have met with no obstacles, and his rights, already acknowledged by the courts, the nobility, and by public opinion, would never have been disputed.

But all was going to change, and did change, as soon as the Earl, on the 21st of November, 1832, in a petition to the King preferred his claim for the payment of a sum of ten thousand pounds with interest, which had been running on for two centuries, and raised the amount to the sum of £110,000 and upwards, due upon the security of a royal bond and letters patent of Charles 1st to the first Earl. This petition was delivered to Viscount Melbourne by Mr. Burn, the solicitor and agent of Lord Stirling. The minister at first declined to present the petition to his Majesty, alleging that Alexander Alexander, esq., claiming to be Earl of Stirling, was not acknowledged by the House of Lords.

But after a correspondence in which the condition of the petitioner as a peer was maintained with success by his professional advisers, the minister yielded the point; and in a letter addressed to Mr. Burn by Lord Melbourne's directions, we read: "I am directed by Viscount Melbourne to acknowledge the receipt of your letter of the 24th ultimo, in which you state that your client has already petitioned the King in council, viz., the 29th August, 1831, on the occasion of the coronation, and on the next day had a reply from the council office under signature of C. Greville, by *direction of the Lords of the* committee of the council, *and addressed to his Lordship as Earl of Stir-*

ling. The accuracy of this statement having been ascertained, Lord Melbourne has laid the petition of your client, which accompanied your letter of the 23d of November last, praying the payment of certain moneys, which he states to be due him as the heir of his great-great-great-grandfather, the Viscount Stirling, under letters patent of his late Majesty, King Charles the First, before the King, and the petition is now referred to the consideration of the Lords of the Treasury, to whom all farther application on this subject must be addressed.

"I am, sir, your obedient servant,

J. M. PHILLIPS."

"J. I. Burn, esq."

A correspondence was without delay established between the Earl of Stirling and the Lords Commissioners of the Treasury; we give a verbatim copy of the first answer which was addressed to the claimant.

"My Lord: I am commanded by the Lords Commissioners of his Majesty's treasury to acquaint your Lordship, in answer to your letter of 15th ultimo, that Government cannot entertain any claim of the nature preferred by you, after a period of two hundred years.

"I am, my Lord,

"Your Lordship's most obedient servant,

(Signed) J. STEWARD."

"*Treasury chambers*, 26*th March*, 1833.

"The Earl of Stirling."

The Lords of the Treasury, it will be seen, saw but one objection to make to the demand of Lord Stirling, that of prescription. Letters upon the same subject, addressed to Lord Stirling by his title, were received from Mr. Secretary Stanly, now Lord Derby. Indeed, Lord Stirling has in his possession letters from all the Prime Ministers of England since 1831, recognising his title and treating him as the Earl of Stirling. With Lord John Russell the correspondence runs down to the recent date of 1848, and the Earl is always addressed by the

Premier as Earl of Stirling. Now it is impossible that titles not really belonging to the Earl of Stirling could have been given to him with such general unanimity, but through the power of a fact recognised by public opinion as an incontestible truth.

Since the period of 1833, at which time no judicial or official sanction seemed wanting to sustain him in his rank, or to empower him to assert effectively his rights, Lord Stirling has been constantly accumulating new evidence in support of his rights of inheritance. Since the judgments in his favor already mentioned, no legal motive, no plausible pretext, no sudden doubts, have arisen to impugn them. Why, then, is he not at this moment in the full and undisturbed enjoyment of the honors and estates of his family? The answer is obvious. The denial of rights, vice-regal as they are, extending over a territory broader than Great Britain and France united, affecting the political relations of more than two millions of subjects, and covering the most valuable fisheries in the world, became a matter of *political necessity* to the British Government. This is a necessity which with that Government has in all times overridden all law and trampled on all individual rights. The majesty of justice bows before it. The press is silent at its bidding, servile officials are ready to execute its orders, and timid courts to pronounce its judgments.

We can only wonder that Lord Stirling, having these truly formidable rights, was not crushed at his first appearance to assert them. The Government had not yet reflected upon the consequences of their recognitions. We have seen that the petition addressed by Lord Stirling to the King for the payment of £10,000, due to him as the heir of his ancestor, the first Earl, had roused the ministers of state. Other proceedings of Lord Stirling excited still more alarm. In 1832, in consequence of certain proceedings in Parliament for the formation of land companies in the British American provinces, Lord Stirling presented a petition to Parliament to stop such proceedings, as interfering with his rights. This petition was ordered

to be printed. A short time previously to this he had filed a bill in chancery against the lessees of the company called the Nova Scotia Mining Company, who had become possessed, under modern grants by Parliament to the Duke of York, of portions of the Nova Scotia estates. The bill stated fully the several rights and powers of Lord Stirling to call upon the parties to account to him for the proceeds of their mining and colliery operations, and to show by what title they held possession of the property. Lord Stirling thus publicly asserted his rights to the Nova Scotia estates, and distinctly put his own rights in issue. The Crown was made a party to this suit. There was a stronger reason than usual in this case for the accustomed delays in chancery, and the suit is still pending. These acts of Lord Stirling fully called the attention of the ministers to the extent of the charters of donation. The case created the greatest anxiety in the cabinet, and several honorable members of the Government were disposed to meet the case with fairness, and compromise with Lord Stirling for the surrender of his rights.

At this time, in 1833, great discontent prevailed in the Canadas. Addresses to the Canadians and Nova Scotians, imprudently prepared by Lord Stirling's agents, were extensively circulated in the colonies. The Government, on the one hand, were fearful of increasing the discontent in the colonies by compromising with Lord Stirling, as important political rights and privileges were secured to the colonists by the charters. On the other hand, they were unwilling that those rights and privileges should accrue to the colonists through the acknowledgment of Lord Stirling's rights by the Government. It was therefore resolved to hang up the case by fictitious suits, and give the impression that Lord Stirling's rights had not been judicially established.

The Government was incited to this course by other influences. Soon after Lord Stirling appeared in Scotland, all the wealthy members of the collateral branches of the family, and

others in possession of the English and Scotch estates, which were endangered by his appearance, met together to consider the expediency of uniting with him for the purpose of compromise. On calculating the chances of his success with a limited fortune, against powerful opposition, sustained by ample means, it was decided to oppose him. All the influence of these parties was brought to bear upon the Government, and immense sums were afterwards pledged by them to the law agents of the Crown on condition that they should defeat Lord Stirling's titles to his lands and honors.

In May, 1833, an action at the suit of the officers of state for Scotland was brought in the Scottish courts for the purpose of challenging and reducing Lord Stirling's services as heir of the first Earl. And here we may observe, that it never has been denied by the Government that the real heir to the first Earl of Stirling is entitled to the vast possessions in America granted by the charters. The existence of the charters could not be denied. The claim of prescription has been found untenable. They could only justify themselves by denying the heirship. This appears from all the documents and correspondence in Lord Stirling's possession, and is confirmed by a letter of the recent date of 1846, addressed to the present Earl by his accomplished law agent, Mr. Lockhart. He says:

"It has never been seriously made a question whether your Lordship has a right to the *dominium utile* of Canada, all excepting such portions of it as were the subject of grants by the first Earl."

We assert, without fear of contradiction, that the suit of the officers of state to reduce Lord Stirling's services was brought in palpable violation of law. *The officers of state, representing the Crown, had no right to sue.* It is a principle of the law of Scotland, that "the Crown refuses no vassal." The attempt of the Crown to reduce the services is a violation of that principle. It is established by the Scotch law that a party who has no title to oppose a service during its progress, is not

entitled to pursue a reduction of it after it has been retoured. It is, further, a well established rule, that no party can challenge a service unless he has a competing brieve claiming to be served in the *same character to the same ancestor*. No one who does not claim to be entitled to be served as heir, can challenge a service, or bring an action for its reduction. It is clear that the Crown, not being a competing heir in blood, wanted the legal title to compete. Finally, the Crown had renounced all right to interfere with Lord Stirling by clauses of the royal charters, such as follow:

"*Which lands and privileges, jurisdiction, &c., specially and generally abovementioned, together with all right, title, &c., which we, or our predecessors or successors have had, or any way can have, claim, or pretend thereto, &c. We, with advice foresaid, &c., of new, give, grant, and dispone to the foresaid Sir William Alexander, and his heirs and assignees, heritably for ever;* RENOUNCING AND EXONERATING THE SAME SIMPLICITER WITH ALL ACTION AND INSTANCE HERETOFORE COMPETENT TO AND IN FAVOUR OF THE SAID SIR WILLIAM ALEXANDER AND HIS HEIRS AND ASSIGNEES, *as well for non-payment of the duties contained in their original infeftments, as for non-performance of due homage, conform thereto, or for non-fulfilment of any point of the said original infeftment, or for commission of any fault or deed of omission or commission prejudicial thereto; and whereby the said original infeftment may in any way be lawfully impugned or called in question,* FOR EVER ACQUITTING AND REMITTING THE SAME SIMPLICITER WITH ALL TITLE, ACTION, INSTANCE, AND INTEREST, HERETOFORE COMPETENT, OR THAT MAY BE COMPETENT TO US, AND OUR HEIRS AND SUCCESSORS, RENOUNCING THE SAME SIMPLICITER, JURE LITE ET CAUSA CUM PACTO DE NON PETENDO, *and with supplement of all defects, as well not named as named, which we will to be held, as expressed in this our present charter. To be holden in free*

blench farm, as said is, and dispensing with non-entry, whensoever it shall happen in manner foresaid."

Notwithstanding the morally impregnable position upon these points of law and fact, and the proofs of his descent, the court of session decided to reduce the services. Lord Stirling immediately appealed to the House of Lords. The case came on for hearing in the House of Lords on the first of March, 1845. After it had been argued by Lord Stirling's leading counsel, who maintained—1st, that the Crown had no right to bring the action of reduction; 2ndly, that the pedigree was established; 3rdly, that the case was taken up without hearing during Lord Stirling's absence on the continent; 4thly, that extraordinary proceedings had been adopted to prevent a fair trial of the whole case; Lord Brougham, in the presence of three ex-chancellors, none of whom dissented, distinctly stated, that the court of session "*had no right* to find that Lord Stirling was not the lawful and nearest heir in general and special of the first Earl," that "the Crown had no right to bring the action," and that "Lord Stirling had a good defence on that head," and that the acts of the court were arbitrary and oppressive. On proceeding with the case, it was found that one of the interlocutors or judgments had been omitted in the appeal, and the hearing of the cause was postponed for the purpose of having the omission corrected. One great object of Lord Stirling's enemies, viz., "*to make a run upon his resources*," (quoting their own words,) had by this time been effected. The enormous expenses of prosecuting the case before the House of Lords prevented Lord Stirling from proceeding with his appeal. The Government were willing enough to have the decision delayed, and the case is still pending under the title which is in itself a sufficient recognition of Lord Stirling's present rank,

"*Alexander Alexander*, EARL OF STIRLING, *appellant*,
and
The Officers of State for Scotland, respondents.

with every prospect of a favorable termination, when the means for prosecuting the case are provided. The facts in relation to these proceedings have been obtained from the printed records of the case, and the original notes and letters of the highly respectable Scotchand English counsel, which have been carefully examined for this purpose.

We do not propose in this rapid sketch to detail all the arbitrary acts of the officers of State, and the Scotch courts, under the pressure of the *political necessity* to which we have alluded; the violation of the law, usage, and practice of centuries; the rejection of evidence; the denial of the means of legal authentication; the arbitrary and illegal removal of an undecided case from a civil to a criminal court, the more effectually to prevent proof being brought; and, finally, the arbitrary decision of a case against Lord Stirling *without giving him a hearing*, acts which Lord Brougham denounced as unprecedented in a British court of justice. Of all these we have the proofs, and are prepared to produce them when the occasion demands. We shall not either speak at length of the infamous trial of Lord Stirling on the charge of forging documents, none of which had been used in the services, of which charge he was triumphantly acquitted by the jury without leaving their seats upon hearing the Crown case alone, amidst the applauding shouts of the people; who afterwards, in their exultation, took the horses from the Earl's carriage, and insisted on drawing him to his house in triumph.

These proceedings will not surprise those who are familiar with English history. Notwithstanding the acknowledged purity of the administration of justice in Great Britain between individuals, yet, in cases of great political emergency, where the Government has felt that vital interests either of jurisdiction or territory were involved, the whole weight of official power has been brought to bear upon the determination of courts and juries. Thus we have seen at the instance of Government the well settled principles of the common law disregarded in the cases of Hampden, Russell, and Sydney; juries packed and

perjured, and informers employed in the cases of Orr and Fennetrey, and even the counterfeiting of the Government paper money of France sustained and sanctioned by the high authorities of the realm as a legitimate means of overthrowing the finances of a rival power. Involving, then, as did the case of Lord Stirling, rights political and territorial of transcendent value, he might well have anticipated that the whole power of the Government by means equally unjust would be wielded, as they were, for his destruction. Here, however, the press, uninfluenced by Governmental power, will proclaim the truth, and insure to him the sympathy and support of generous and enlightened men in England and America.

It is sufficient for us on reviewing these proceedings to say, that Lord Stirling's legal position is not yet affected. He is still Earl of Stirling, and invested with all the rights and estates of his ancestor in America. He is in present possession, and until the final decision of the House of Lords shall rightfully and legally reduce his services, which cannot be done as the law stands, all grants and conveyances of estates, and what may be more important, of rights and privileges, must remain valid.

We will now proceed to give a statement of the property, rights of action, and privileges in the British Provinces, the United States, and Great Britain, which may be made available in whole or in part to Lord Stirling or his assignees by legal proceedings sustained by sufficient means, or by compromise. They are as follows:

I. All the public or unoccupied lands in Nova Scotia, New Brunswick, and Prince Edward's Island, all which provinces, as will be seen by the charter of *Novo damus* of 1625, are included within the limits of Nova Scotia, "together with all mines, as well royal, of gold and silver, as other mines of iron, lead, copper, tin, brass, and other minerals whatsoever."

Title.—Original charter of Nova Scotia of 10th September, 1621. The same Reg. Mag. Sig., B. 50, No. 36.

Charter of *Novo damus* of 12th July, 1625, Reg. Mag. Sig., B. 51, No. 23.

Also seisin of Nova Scotia, dated 8th July, 1831; recorded Gen'l Reg'r of Seisins, vol. 1646, fol. 102.

II. All the public and unoccupied lands of the whole Province of Canada amounts to at least ten millions of acres of good improvable lands, together with all the mines and minerals as in the Nova Scotia grant, embracing the valuable copper mines on the Canadian side of Lake Superior.

Title.—Charter of Canada, February 2d, 1628; Reg. Mag. Sig., B. 52, No. 110. Confirmed by act of Parliament. Seisin, 8th July, 1831, Gen'l Reg'r of Seisins, vol. 1646, fol. 111.

III. The public lands in the northern parts of Wisconsin and Michigan, including all the copper mines of Lake Superior. These lands are covered by the Canada charter, as follows: "We give and grant to the foresaid Sir William and his foresaids fifty leagues of bounds on both sides of the foresaid river of Canada, (now called St. Lawrence,) from said mouth and entrance to the said head fountain and source thereof, also on both sides of said other rivers flowing into the same; as also on both sides of the said lakes, arms of the sea, or waters, through which any of the said rivers have their source, or in which they terminate."

The claim to these lands will be the subject of compromise with the United States and the various mining companies, none of which have had possession for twenty years.

Title, charter of Canada.

IV. The public lands owned, or claimed to be owned by the States of Maine and Massachusetts, within the territory of the State of Maine, including the most valuable timber lands of the State. The State of Massachusetts was offered within a year over $600,000 for her interest in these lands. These lands are covered by the charter of Canada. They are also

included in a patent from the Plymouth company, dated April 22d, 1835.

A portion of territory south of the River St. Croix was included in the original patent to the Plymouth company of 1621. This conflicted with the grant of the Lordship of Canada to Lord Stirling. The company was commanded to make over that tract to the Earl of Stirling, which conveyance would accresce to and be corroborated by his Majesty's previous grant of the Lordship of Canada. Accordingly the Plymouth company, corporation or council of New England, by and with the consent, direction, appointment, &c., of King Charles, issued letters patent to William Earl of Stirling, his heirs and assigns, dated 22d April, 1635, "for a tract of the Maine land of New England, beginning at St. Croix, and from thence extending along the sea coast to Pemaquid and the River Kennebeck," to which was added the island of Long Island with all the islands thereto adjacent. Large tracts of land on Long Island are held under this title, and the deeds from the first Earl of Stirling's agent are found on the ancient records of the island.

V. Claim to a strip of country three hundred miles broad, extending from the head waters of Lake Superior to California, and to the territory of California. The words of the charter of Canada are: "And in like manner we have given and granted, and by our present charter, give and grant, to the foresaid Sir William Alexander, and his foresaids, all and whole the bounds and passages, as well in waters as on land, from the foresaid head, fountain and source of the river Canada, wheresoever it is, or from whatsoever lake it flows down to the aforesaid Gulf of California, whatsoever the distance shall be found to be, with fifty leagues altogether, on both sides of the said passage, before the said head of the river Canada, and Gulf of California; and likewise all and sundry islands lying within the said Gulf of California; as also and whole, the lands and bounds adjacent to the said Gulf on the west and south, whether they be found a part of the Continent or main land, or an island as it is thought they are, which is

commonly called and distinguished by the name of California."

It may be doubted whether the English ever had a title to this country by discovery. But it has been claimed by them from the discovery of Sir Francis Drake, from whom San Francisco was named. As the United States does not sell any of the public lands in California, many persons would without doubt be glad to avail themselves of a title, such as it is, from Lord Stirling.

IV. Claim for £10,000 against the British Government with interest thereon, granted to the first Earl of Stirling by letters patent from Charles I, in 1632, as a compensation for relinquishing Port Royal at the King's command. The patent is not denied by the British Government, nor is payment averred. They plead prescription in defiance of the legal maxim, *nullum tempus occurrit regi*.

VII. Proceeds of the mines of the Nova Scotia mining company, now in chancery in England, the same having been enjoined by the Earl of Stirling. This suit is still pending. The amount in court cannot now be precisely stated, but it exceeds £300,000. The sums included in the two last claims amounting to over two millions dollars, would be most readily available for payment to Lord Stirling in case of a compromise with the British Government.

VIII. Right to the fisheries on all the coasts of Canada, Nova Scotia, New Brunswick, and Prince Edward's Island.

This extraordinary right, so important at this juncture to the United States in a political point of view, and to the people of the north as a means by which they may recover their ancient and well earned privileges, lost to them by diplomatic blundering in 1818, demands a somewhat extended notice.

It is well known that by the treaty of peace between the United States and Great Britain in 1783, the people of the United States secured from the British Government, so far as they had the power to dispose of it, the right to catch fish on

the Grand Bank, the Bank of Newfoundland, in the Gulf of St. Lawrence, *and in all other places in the sea where the inhabitants of both countries used at any time to fish.*

By the convention of 1818 the United States, after obtaining from Great Britain the concession of the right of fishing on certain coasts of Newfoundland, on the shores of the Magdalen islands, and the southern coast of Labrador, renounced forever the liberty *of fishing within three miles of any other part of the British coasts in America, or of curing or drying fish on them.* The construction recently given to this treaty by the law officers of the Crown is, that these three miles are to be measured from headland to headland. By this treaty and its late construction our vessels are excluded from the best fishing grounds, particularly in the Gulf of St. Lawrence, where the greater number of our vessels resort. Our fishermen are shut out from the early spring and fall fisheries, precisely those of the greatest value and most easily prosecuted. To the mackerel fishermen especially this restriction is ruinous, as they are not allowed to follow the fish within three miles of the shore, within which limits the largest schools are generally found. The loss to the fall fisheries of Massachusetts alone, in consequence of the enforcement of these restrictions by the British fleet, last year, was estimated by official returns at over one million of dollars.

Amidst all the discussions of this question in the Senate and by the press, no ingenuity or political sagacity have suggested any mode of reclaiming these rights so foolishly and ignorantly surrendered, except by a hostile resumption, without any title or pretext to justify us to the world, or by negotiations which could hardly be effected without humiliating concessions to Great Britain. But by the treaty of 1818 we renounced only the rights of fishing which we then claimed. As between ourselves only and Great Britain, we acknowledged that her title was best. We did not bind ourselves to defend that title against others, or not to purchase the rights in question of any party who might be found to have a better legal title.

Independently of the title founded on ancient charters and treaties, the *natural right* to the fisheries on all the northern coasts and islands belongs exclusively to the people of the United States, and more particularly the people of New England. It is not only theirs by prescription, but these fishing grounds were won from the French, not by the soldiers of the British Crown, or the people of the Provinces, which were then hardly inhabited, but by New England blood and treasure. Our great American historian informs us that the old French wars on our northern continent were prosecuted mainly to secure for the benefit of the French Crown the American fisheries, which were deemed indispensable for the supply of treasure and the maintenance of the navy of France. For this purpose, for nearly a hundred years, New England homes were desolated by Indian wars. The final blow which prostrated French power upon our seas, the capture of Louisburgh, commanding as it did the waters of the Gulf of St. Lawrence, and the coasts of Nova Scotia and Newfoundland, was struck by the son of a New Hampshire fisherman, at the head of New England fishermen and yeomen. These traditions are still cherished by the firesides of the North, and it is most mortifying and irritating to the people to see their ancient fishing grounds, won by their fathers' blood, guarded by a British fleet, and to read the recent laws of a petty province, providing that if any American vessel "shall have been found fishing, or preparing to fish, within three miles of the coasts and harbors, such vessel or boat, and the cargo, shall be forfeited." It cannot therefore be doubted that the public sentiment of the whole American people will sustain the Government of the United States, or its citizens, in defending any legal title which will enforce or give additional effect to their natural rights.

Now it is most extraordinary that the charters of Nova Scotia and Canada give to Lord Stirling, his heirs and assigns, the complete right of fishing within six leagues of the shore

on precisely the coasts which we have relinquished; an extent of coast of over three thousand miles in length. The charter of Nova Scotia, after giving the boundaries of the country granted, including New Brunswick, with remarkable accuracy, proceeds in these words: "Including and comprehending within the said coasts and their circumference, from sea to sea, all the continents, with rivers, brooks, bays, shores, islands, or seas lying near or within six leagues of any part of the same, on the west, north, or east side of the coasts; and from the south-east, where lies Cape Breton, and the south part of the same, where is Cape Sable, all the seas and islands southward within forty leagues of the said coasts thereof," &c. And the charter proceeds to grant to Sir William Alexander, his heirs or assigns, among other things, all "*marshes, lakes, waters,* FISHERIES, AS WELL IN SALT WATER AS IN FRESH, of *royal fishes,* as of others," &c., ("*marressiis lacubus aquis piscationibus tam in aqua salsa quam recenti tam regalium piscium quam aliorum.*") The charter also refers to undertakings which the grantee may make with "*divers of our subjects and* OTHERS *who probably shall enter into contracts with him and his heirs, assignees, or deputies for* lands, FISHERIES," &c.

If Lord Stirling is heir of Sir William Alexander, as he is judicially established to be, the title to the fisheries is in him, and not in the British Government, or in the people of the British Provinces. He has the undoubted power of assigning and transferring this right to American citizens, or of granting licenses to American fishermen. And American citizens or fishermen, if disturbed in the right thus acquired, may demand the protection of the Government of the United States, which will be bound to see if the title is good, and, if so, to defend it.

Lord Stirling is now in this country, fortified with all the muniments of his honors and estates. He comes here, not only with all the documents necessary to prove the statements in the

preceding pages, but with testimonials from the highest sources in England and France, as to his personal character, which give the strongest moral confirmation of the righteous fulness of his cause. Amidst all the opposition he has encountered, the utmost malevolence of his enemies has never been able to throw a doubt upon his personal honor and integrity. Even the ministers, who were interested to defeat him, acknowledged that they "knew Lord Stirling was an honorable man." His friends in his adversity rallied round him with such letters as the following from Lieut. Gen. D'Aguilar, lately commander in chief of the British forces in China, and now governor of Portsmouth, addressed to Lord Stanly, now Lord Derby:

* * "I should do violence to the best feelings of my heart if I did not say that a more conscientious, moderate minded, honorable man than the Earl of Stirling does not exist, in my estimation. I have known him from his earliest years, and had the happiness of passing some of the happiest days of my youth in the society of his family, than which none could be more respectable or more respected. I believe Lord Stirling to be incapable of desiring any thing but the barest justice, and know myself incapable of asking more." * * *

Thus sustained, Lord Stirling comes among a people of large ideas, who will not be astounded at the extent of his rights, or discouraged at the opposition by a Government which they have been educated to believe does not scruple at the means by which it defends the possessions within its grasp. While he is determined to oppose none of the vested prescriptive rights of individuals, and is ready to make the most favorable arrangement with the States whose titles to land in this country may conflict with his own, he is prepared to give most liberal grants to those who will aid him in recovering *all* the ancient estates of his family in the British Provinces. And to give the most striking proof of his good will to the people of the United States, and at the same time to put at issue before the world the question of his rights, he is ready at once to grant to American citizens

licenses to fish on all the coasts of Canada, Nova Scotia, New Brunswick, and Prince Edward's Island.

The writer of the preceding pages has prepared this statement after a most attentive examination of original and authentic documents. Nothing has been stated that these documents will not prove. He has deemed it unnecessary to weary the reader by presenting cumulative evidence in support of the positions above maintained, that Lord Stirling's rights have been judicially established and officially recognised, and that the want of his present enjoyment of them is due, not to any doubt as to his heirship and identity, or the validity and effect of the charters, but to the political consequences involved in reinstating him in the ancient possessions of his family. Numerous letters, confirmatory of the views above presented, from noblemen of rank in Great Britain, and opinions of eminent counsel in London and Edinburgh, and of learned historians and advocates in France which might have been referred to, have not been cited. It is believed that the American public will be satisfied with a reference to a single authority, whose weight is every where acknowledged in this country. In the course of the examination of this case the writer was requested by Lord Stirling to call upon the Hon. Robert J. Walker, late Secretary of the Treasury, and learn from him directly the views which he had expressed on this subject. The matter having been accordingly mentioned by the writer to Mr. Walker, he stated that, prior to his departure for Europe he had, at the request of Lord Stirling, examined the case, and although his multiplied engagements prevented his having been professionally employed as counsel as Lord Stirling desired, he (Mr. Walker) entertained an undoubted conviction, which was confirmed by conversation relative to the case with several distinguished persons during Mr. Walker's late visit to England and Scotland, of the *heirship, identity, and legal rights* of Lord Stirling.

APPENDIX.

Opinion of A. H. Lawrence, Esq., of Washington, D. C., Counsellor at Law.

BETHLEHEM, PA., *June* 23, 1853.

JOHN L. HAYES, ESQ.
Washington, D. C.

DEAR SIR: I have received yours of the 21st inst. in respect to the case of Lord Stirling. I had previously given to the legal questions a pretty thorough examination, and am convinced that the claims of the present Earl are legally of the strongest character. But as the papers are so voluminous, and the authorities so numerous, it would require both time and space to write out an opinion which would do justice either to one's self or the case, I have thought best merely to hint (for the present) at the points which present themselves on a more careful view.

As to the authenticity of the grants to the original Earl of Stirling, I suppose there can be no rational doubt. They are matters of undoubted history.

The questions, then, as I conceive, are these: 1st. Is the present claimant of the title and estate the real heir, lineally descended from the original grantee? 2d. If so, have his rights been lost by negligence or want of possession? There are some subordinate questions embraced in these to which I shall presently allude; but I think it may be safely assumed that if the grants were genuine, and the present claimant is the heir of the original grantee, and that he has not lost his rights by laches, that then he has a subsisting legal title to all the lands included in the grants which have not been disposed of by the grantee or his heirs.

1st. Is the present claimant the right heir of the original grantee? It appears from the papers that the present claimant obtained two verdicts of juries upon the question of his heirship to that original grantee, Lord Stirling. These verdicts were given by juries summoned according to the Scottish law. In a proceeding called (I think) the "service of an heir," a jurisdiction particularly and especially provided for the trial of the fact of heirship, where any question is made as to the

heirship of any one claiming to be heir of another. In Erskine's Institutes, and in Bell's Scotch Law Dictionary, this proceeding is particularly described; and from these books it will be seen that it is a *special jurisdiction*, for the trial of that particular issue. Now the law, I think, is well settled, that when a court, having jurisdiction, had pronounced upon the *status* of an individual, it is conclusive as to such *status* everywhere and always. It is like a judgment *in rem* in admiralty; or a judgment as to the validity of a marriage, or the legitimacy of a child, in the ecclesiastical courts, (where they have jurisdiction.) Indeed, it don't differ from the effect of any other judgment, for *all* judgments of competent courts are conclusive as to the PARTICULAR SUBJECT MATTER in controversy; and in these cases the *subject matter* is the *status*, the validity of the marriage or the legitimacy of the child. I think this doctrine is laid down in the Duchess of Kingston's case, in the State trials, 20th volume, I believe. [See Sto. Conf. Laws, Foreign Judgments.] Of course it will be necessary for the present claimant to show in this country that he is the person who obtained those verdicts; and upon that the question of his heirship must be taken as established.

2d. As to Lord Stirling having lost his rights by laches. In the first place, the grants themselves, so far as the British Crown is concerned, have, by every possible variety of phraseology, attempted to exclude every conclusion of fact or of law against the grantee *from not taking possession;* so that the *British Government* at least would be stopped from setting up this objection. The country was looked upon in the grants, as it was in reality, as a wilderness, of which no use could be made and no actual possession taken. Then as to the lands in Maine. We take for granted that the State will relinquish to Lord Stirling any of his lands which she holds, without insisting upon her immunity from being sued, if she is satisfied that, in point of law, the lands belong to Lord Stirling. As to these lands, the statute of limitations of the State would be no bar; because, if Lord Stirling could sue the State, he was beyond seas, and excepted from the statute. If he could not sue the State, then he was not *within* the statute, because he had no *right* of ACTION accrued, which is the point from which statutes of limitation run.

But, again, suppose that a title to these lands could have been acquired by adverse possession, still the fisheries would not go as parcel of that possession. The fisheries were granted not as appurtenant to the lands, but as a special personal privilege; and if they *had* been granted as appurtenant to the lands, it was a *special* appurtenance to the lands made

so by grant and not by force of law, and I think could not be *acquired* by mere adverse possession of the lands.

Upon the whole, I am of opinion that the title of the present claimant is sound in law, and that he ought to recover the lands. I have written these hints hastily and informally, though I have bestowed a good deal of labor in the examination.

Very respectfully,
Your ob't servant,
Signed, A. H. LAWRENCE.

[TRANSLATION.]

INSTRUMENT OF SEISIN

IN FAVOR OF

ALEXANDER, EARL OF STIRLING AND DOVAN,

OF THE LORDSHIP AND BARONY OF NOVA SCOTIA IN AMERICA, COMPREHENDING THE LANDS, ISLANDS, AND OTHERS, AFTER MENTIONED.

IN THE NAME OF GOD, Amen. Be it known to all men by this persent public instrument, THAT on the 8th day of July, in the year of our Lord 1831, and of the reign of our sovereign lord, William the Fourth, by the grace of God of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, the second year, In presence of me, notary public, clerk of the sheriffdom of Edinburgh, and the witnesses subscribing, appeared personally Ephraim Lockhart, writer to his Majesty's signet, attorney for and in name of the Right Honorable Alexander Earl of Stirling and Dovan, great-great-great grandson of the deceased Sir William Alexander of Menstrie, Knight, the first Earl of Stirling, whose power of attorney was sufficiently known to me, the undersigned notary-public; and passed with us and with Adam Duff, Esquire, advocate, Sheriff-depute of the sheriffdom of Edinburgh, specially constituted by the precept of seisin under inserted, to the Castle of Edinburgh, where by the said precept seisin is to be taken for all and whole the country and others under mentioned, HAVING and HOLDING in his hands the precept of seisin under inserted, directed forth of our sovereign lord the King's chancery in favor of the said Alexander Earl of Stirling and Dovan, as nearest and lawful heir served and retoured to the said William Earl of Stirling, his great-great-great grandfather, for giving seisin to him of ALL and SUNDRY the lands and others after mentioned, contained in the said precept of seisin under inserted; WHICH precept of seisin the foresaid attorney, in the name of the aforesaid Alexander Earl of Stirling and Dovan, exhibited and presented to the said Adam Duff, Sheriff aforesaid, and desired him to proceed to the execution of the said precept of seisin, agreeably to the tenor thereof; WHICH DESIRE the said sheriff finding to be just and reasonable, he received the said precept of seisin into his hands, and delivered it to me, the undersigned notary-public, to be read, published and explained, in the common speech, to the witnesses present; WHICH I did, and of which precept of seisin the tenor follows in these words:

" WILLIAM THE FOURTH, by the grace of God of the United Kingdom of ' Great Britain and Ireland, King, Defender of the Faith, to the Sheriff of ' Edinburgh and his Bailies, Greeting. FORASMUCH as it is found, by an inquest ' made by our command, by George Tait, Esquire, Sheriff-substitute of the ' sheriffdom of Edinburgh, as sheriff for that effect, specially constituted, in ' virtue of a commission under the testimonial of the seal, therein specified, and ' retoured to our chancery, THAT the deceased Sir William Alexander of Men- ' strie, Knight, the first Earl of Stirling, great-great-great grandfather of the ' Right Honorable Alexander Earl of Stirling and Dovan, Viscount of Stirling ' and Canada, Lord Alexander of Tullibodie, &c., bearer hereof, died at the ' faith and peace of the King, last vest and seised as of fee in all and sundry the ' lands, continents and islands situate and lying in America, within the head or ' cape commonly called Cap de Sable, lying near the latitude of forty-three de- ' grees north from the equinoctial line, or thereabouts, from which cape towards ' the sea-coast verging to the west, to the naval station of St. Mary, commonly ' called St. Mary's Bay, and thereafter northwards by a straight line passing

'the inlet or mouth of that great naval station which runs out into the eastern 'tract of land between the countries of the Suriquois and Stechemines, to the 'river commonly called of St. Croix, and to the furthest source or fountain 'head thereof on the western part, which first unites itself with the foresaid 'river, whence, by an imaginary straight line, conceived to proceed overland, 'or run northwards, to the nearest naval station, river or source discharging 'itself into the great river of Canada, and from it proceeding eastwards by 'the coasts of the said river of Canada to the river, naval station, port or 'shore commonly known and called by the name of Gathepé or Gaspé, and 'thereafter towards the southeast to the islands called Bacalaos, or Cape 'Breton, leaving the said islands on the right, and the gulf of the said great 'river of Canada, or great naval station, and the lands of Newfoundland, with 'the islands belonging to these lands, on the left, and thereafter to the head or 'cape of Cape Breton foresaid, lying near the latitude of forty-five degrees or 'thereabouts, and from the said cape of Cape Breton towards the south-west, to 'the foresaid Cap de Sable, where the perambulation began, including and com-'prehending within the said coasts, and their circumference from sea to sea, all 'the lands and continents, with the rivers, brooks, bays, shores, islands or seas, 'lying near or within six leagues of any part of the same, on the western, north-'ern, or eastern sides of the coasts, and precincts thereof, and on the south-east, '(where lies Cape Breton,) and on the southern part of the same, (where is Cap 'de Sable,) all the seas and islands southwards within forty leagues of the said 'coasts thereof, including the great island commonly called Isle de Sable or Sab-'lon, lying towards the south-south-east, in the sea, about thirty leagues from Cape 'Breton foresaid, and being in the latitude of forty-four degrees or thereabouts: 'which lands foresaid should in all time to come enjoy the name of Nova Scotia 'in America; Which also were vested in William, the said Earl of Stirling, 'according to a charter of novodamus under the great seal of the kingdom of 'Scotland, dated the 12th day of July anno Domini 1625, made, given and 'granted by Charles, King of Great Britain, France and Ireland, in favour of the 'said William Earl of Stirling, (then and throughout named Sir William Alex-'ander,) his heirs and assigns whatsoever, heritably: And by which charter it 'is declared, that the foresaid William Earl of Stirling should divide the fore-'said lands into parts and portions as should seem to him fit, and bestow names 'on them at pleasure: Together with all mines, as well royal of gold and silver, 'as other mines of iron, lead, copper, tin, brass, and other minerals whatsoever, 'with the power of digging and causing dig from the land, purifying and re-'fining the same, and converting and using them to his own proper use, or 'other uses whatsoever, as should seem fit to the said William Earl of Stirling, 'his heirs or assigns, or to those who, in their place, should happen to settle in 'the said lands: Reserving only to his said Majesty and his successors the 'tenth part of the metal, commonly called ore of gold and silver, that shall after-'wards be dug or gained out of the earth; Leaving to the said William Earl of 'Stirling, and his foresaids, whatsoever his said Majesty, and his successors, 'might in any way demand of other metals, copper, steel, iron, tin, lead, or 'other minerals, that they may so much the more easily bear the great charges 'of extracting the foresaid metals, together with pearls and other precious 'stones whatsoever, quarries, woods, copses, mosses, marshes, lakes, waters, 'FISHERIES, as well in salt water as in fresh, of royal fishes as of others, hunting, 'hawking, commodities and hereditaments whatsoever: Together with full 'power, privilege and jurisdiction of free regality and chancery for ever; and 'with the gift and right of patronage of churches, chapels and benefices, with 'tenants, tenandries and services of free tenants thereof, together with offices of 'Justiciary and Admiralty respectively, within the bounds above mentioned re-'spectively: TOGETHER also with the power of erecting corporations, free 'boroughs, free ports, towns and boroughs of barony, and of appointing mar-'kets and fairs within the bounds of the said lands, and of holding courts of 'justiciary and admiralty within the boundaries of the said lands, rivers, ports 'and seas; together also with the power of imposing, levying and receiving all 'tolls, customs, anchorages, and other dues of the said boroughs, markets, fairs 'and free ports, and of possessing and enjoying the same as freely in all re-

'spects as any greater or lesser baron in the kingdom of Scotland has enjoyed, 'or shall be able to enjoy them, at any time past or to come; with all other 'prerogatives, privileges, immunities, dignities, casualties, profits and duties 'belonging and pertaining to the said lands, seas, and bounds of the same; and 'which his said Majesty shall have power to give and grant, as freely and in as 'ample form as he himself or any of his noble progenitors has granted any 'charters, letters patent, infeftments, gifts, or patents, to any subject of what-'soever degree or quality, to any society or community, planting such colonies 'in whatsoever foreign parts, or exploring foreign lands, in equally free and 'ample form as if the same were inserted in the said charter: Making, consti-'tuting and appointing the said William Earl of Stirling, his heirs or assigns, 'or their deputies, his said Majesty's Hereditary Lieutenants-general, to repre-'sent his royal person, as well by sea as by land, in the countries, sea-coasts 'and boundaries foresaid, in repairing to the said lands, so long as he shall 'continue there, and in returning from the same; to govern, rule, punish 'and pardon all subjects of his said Majesty who shall have happened 'to go to the said lands, or to be inhabiting the same, or who shall 'have engaged in trade with them, or shall remain in the same places, and to 'be favourable to them; and to establish such laws, statutes, constitutions, reg-'ulations, instructions, forms of government, and ceremonies of magistracies 'within the said bounds, as to him, William Earl of Stirling, or his foresaids, 'for the government of the said country and its inhabitants, in all causes, crimi-'nal as well as civil, shall seem fit; and to alter and change the said laws, regu-'lations, forms and ceremonies, as often as he, or his foresaids, for the good 'and advantage of the said country, shall be pleased, so that the said laws were 'consistent, as much as they could be made, with the laws of the said kingdom 'of Scotland; And giving and granting free and plenary power to the foresaid 'William Earl of Stirling, and his foresaids, of conferring favours, privileges, 'employments and honours upon deserving persons, with full power to those, 'or any of them, who shall have happened to make covenants or contracts 'for the said lands with him, William Earl of Stirling, and his foresaids, under 'the subscription of himself or of his foresaids, and the seal mentioned in the 'said charter, of disponing and overgiving any portion or portions of the said 'lands, ports, naval stations, rivers, or any part of the premises; of erecting 'also inventions of all sorts, arts, faculties, or sciences, or of practising the same 'in whole or in part as to him, for their good, shall seem fit; also of giving 'granting and bestowing such offices, titles, rights and powers as to him shall 'appear necessary, according to the qualities, conditions and merits of the per-'sons; WITH POWER to the said William Earl of Stirling, and his heirs and 'assigns, of erecting, founding and constructing common schools, colleges and 'universities, sufficiently provided with able and sufficient masters, rectors, re-'gents, professors of all sciences, learning, languages and instruction, and of 'providing for sufficient maintenance, salaries, and living for them to that ef-'fect; As also of instituting prelates, archbishops, bishops, rectors and vicars 'of parishes, and parish churches, and of distributing and dividing all the fore-'said bounds of the said country into divers and distinct shires, provinces and 'parishes, for the better provision of the churches and ministry, division of the 'shires, and all other civil police; And likewise of founding, erecting and in-'stituting a senate of justice, places and colleges of justice, council and session, 'senators thereof, members for the administration of justice within the said coun-'try, and other places of justice and judicature: Further, of erecting and ap-'pointing also secret and privy councils and sessions for the public good and 'advantage of the said country, and giving and granting titles, honours and 'dignities to the members thereof, and creating their clerks and members; And 'appointing seals and registers with their keepers; and also of erecting and insti-'tuting officers of state, a chancellor, treasurer, comptroller, collector, secretary, 'advocate or attorney-general, a clerk or clerks of register, and keepers of rolls, 'justice clerk, director or directors of chancery, conservator or conservators of 'the privileges of the said country, advocates, procurators and solicitors there-'of, and other members necessary: AND FURTHER, of giving, granting and dis-'poning any parts or portions of the said lands and lordship of Nova Scotia,

'heritably belonging to them, to and in favour of whatsoever persons, their 'heirs and assigns, heritably, with the teinds and teind-sheaves thereof included, '(provided they are his Majesty's subjects,) to be holden of the said William 'Earl of Stirling, or of his said Majesty and his successors, either in blench-farm, 'feu-farm, or in ward and relief, at their pleasure, and to intitle and denomi-'nate the said parts and portions by whatsoever styles, titles and designations 'should seem to them fit, or be in the will and option of the said William Earl 'of Surling and his foresaids; which infeftments and dispositions shall be ap-'proved and confirmed by his said Majesty and his successors, freely, without 'any composition to be paid therefor: MOREOVER, his said Majesty and his 'successors shall receive whatsoever resignations shall have been made by the 'said William Earl of Sterling, and his heirs and assigns, of all and whole the 'foresaid lands and lordship of Nova Scotia, or of any part thereof, in the hands 'of his said Majesty, and of his successors and commissioners, with the teinds 'and teind-sheaves thereof included, and others generally and particularly above 'mentioned, to and in favour of whatsoever person or persons, (provided 'they are his Majesty's subjects, and live under his obedience,) and they 'shall pass infeftments thereon, to be holden in free blench-farm of his said 'Majesty, his heirs and successors, in manner above mentioned, freely, with-'out any composition: MOREOVER, giving, granting and committing power 'to the said William Earl of Stirling, and his heirs and assigns, of having and 'lawfully establishing and causing coin money in the said country and 'lordship of Nova Scotia, and for the readier convenience of commerce and 'agreements amongst the inhabitants thereof, of such metal, form and fashion 'as they shall appoint or fix: FURTHER, giving, granting, ratifying and con-'firming to the said William Earl of Stirling, and his heirs and assigns, all places, 'privileges, prerogatives and precedencies whatsoever, given, granted and re-'served, or to be given, granted and reserved to the said William Earl of Stir-'ling, and his heirs and assigns, and his successors, Lieutenants of the said 'country and lordship of Nova Scotia, over the knights-baronets and remanent 'portioners and associates of the said plantation, so as the said William Earl of 'Stirling, and his heirs-male descending of his body, as Lieutenants foresaid, 'might and could take place, prerogative, pre-eminence and precedency, as well 'before all squires, lairds and gentlemen of the said kingdom of Scotland, as 'before all the foresaid knights-baronets of the said kingdom, and all others 'before whom the said knights-baronets, by privilege of the drgnity gaanted to 'them, can have place and precedency: ALL and whole which province and 'lands of Nova Scotia, with all the boundaries and seas of the same, were 'united, annexed and incorporated into one entire and free lordship and barony, 'to be called by the foresaid name of Nova Scotia in all time to come; and by 'which charter it is ordained, that one seisin, to be taken by the said William 'Earl of Stirling, and his foresaids, at the Castle of Edinburgh, without any 'other special or particular seisin by himself and his foresaids, at any other 'part, shall stand and be sufficient, in all time coming, for all and whole the 'country above mentioned, with all the parts, pendicles, privileges, casualties, 'liberties, and immunities thereof; as in the said charter, comprehending divers 'other conditions, provisions, limitations and restrictions, with many and great 'privileges, immunities, dignities and honours, is more fully contained; AND 'in which lands aforesaid, the foresaid William Earl of Stirling was duly infeft, 'in virtue of the precept of seisin inserted in the end of the said charter, accor-'ding to instrument of seisin following thereon, dated the 29th day of September, 'and recorded in the General Register of Seisins, &c. kept at Edinburgh, the '1st day of October anno Domini 1625: AND THAT the said Alexander Earl of 'Stirling and Dovan is nearest and lawful heir of the said deceased William 'Earl of Stirling, his great-great-great grandfather, in all and sundry the lands 'and others foresaid; AND THAT he is of lawful age; AND THAT the said lands 'and others, with the pertinents, are holden immediately of us in chief. WHERE-'FORE we require and command you, that ye give seisin thereof to the foresaid 'Alexander Earl of Stirling and Dovan, or his certain attorney, bearer hereof, 'without delay, saving the right of every person whatsoever, and taking se-'curity of two pennies Scots money, by duplication of the blench farm-duty of 'the foresaid lands and others as above mentioned, lying as above, due to us;

'and this no wise ye leave undone, these presents after the next term being to 'no purpose. Witness myself at Edinburgh, the 7th day of July, and in the 'second year of our reign, 1831.

'To the Sheriff of Edinburgh and his Bailies, for Alexander Earl of Stirling 'and Dovan, to his great-great-great grandfather.

(*Signed*) 'WILLIAM CAMPBELL Jr. Sub.'

AFTER READING and INTERPRETING which precept of seisin, in the common speech, to the witnesses present, the foresaid Sheriff, in virtue of the said precept of seisin, and of the dispensation therein contained, and the office of bailiary therein committed to him, GAVE and DELIVERED heritable state and seisin, actual, real and corporal possession of the said lands and others above specified, with the pertinents, to the before-named Alexander Earl of Stirling and Dovan, heir aforesaid, and that by delivery of earth and stone of the ground of the said Castel into the hands of the said attorney, for and in name of the said Alexander Earl of Stirling and Dovan, after the tenor of the said precept of seisin above inserted, and dispensation contained in the same, in all points. WHEREUPON, and upon all and sundry the premises, the foresaid attorney asked instruments from me, the undersigned notary-public. THESE THINGS WERE SO DONE at the said Castle of Edinburgh, within the outer gate there, in virtue of the dispensation foresaid, between the hours of eleven forenoon and twelve noon, on the day of the month, in the year of our Lord, and of the reign of our sovereign lord the King, above written, IN PRESENCE OF David Byars, clerk in the office of the clerk of the sheriffdom of Edinburgh, and William Wilson, second son of me, notary-public, residing in Lyndoch Place, at Edinburgh, witnesses to the premises specially called and required, and this public instrument with me subscribing.

AND I truly, James Wilson, clerk of the diocese of Edinburgh, and clerk of the sheriffdom of Edinburgh, and notary public, by royal authority, and by the Lords of Council and Session, according to the tenor of the act of Parliament admitted, because at all and sundry the premises, whilst they were, as is before stated, so said, done and performed, I was, together with the before-named witnesses, personally present, and all and sundry these premises I saw, knew, and heard so performed and said, and took a note of them; therefore I, being called and required, prepared therefrom this present public instrument, by another hand, upon this and the six foregoing pages of parchment, duly stamped, with the marginal addition on page third, faithfully written, and have rendered it in this form of a public instrument; and in faith, corroboration and testimony of the truth of all and sundry the premises, have signed and subscribed the same with my sign, name and surname, used and wont.

Veritas.

JA. WILSON, N. P.

Dav. Byars, witness.
Wm. Wilson, witness.

At Edinburgh, the twelfth day of August one thousand eight hundred and thirty-one years, this sasine was presented by Ephraim Lockhart, writer to the signet, and is recorded in the one thousand six hundred and forty-sixth book of the new General Register of Sasines, Reversions, &c. and on the 102, 103, 104, 105, 106, 107, 108, 109, 110, and 111th leaves thereof, conform to the act of Parliament made there anent in June 1617, by me, depute-keeper of said Register.

AR. WISHART.

[TRANSLATION.]

INSTRUMENT OF SEISIN

IN FAVOUR OF

ALEXANDER, EARL OF STIRLING AND DOVAN,

OF THE LANDS, COUNTRY AND LORDSHIP OF CANADA AND OTHERS.

IN THE NAME OF GOD, Amen. Be it known to all men by this present public instrument, THAT on the 8th day of July, in the year of our Lord 1831, and of the reign of our sovereign lord, William the Fourth, by the grace of God of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, the second year, In presence of me, notary-public, and the witnesses subscribing, appeared personally Ephraim Lockhart, writer to his Majesty's signet, as procurator and attorney, specially constituted, for and in the name of the Right Honourable Alexander Earl of Stirling and Dovan, Viscount of Stirling and Canada, Lord Alexander of Tullibodie, &c. great-great-great-grandson and heir of the deceased Sir William Alexander, Knight, the first Earl of Stirling, whose power of procuratory was sufficiently known to me, the undersigned notary-public; and there also appeared Thomas Christopher Banks, Esquire, residing in No. 19. Duke Street, Edinburgh, bailie in that part specially constituted, in virtue of the charter under mentioned, and precept of seisin therein contained, to the Castle of Edinburgh, the place for giving seisin of the lands and others under written, in virtue of the union and dispensation contained in the said charter and precept of seisin under written; the said attorney HAVING and HOLDING in his hands a certain extract registrate charter, made, given and granted by Charles, King of Great Britain, France and Ireland, under his Great Seal, containing therein the precept of seisin for giving to the foresaid Sir William Alexander, his Majesty's Hereditary Lieutenant of the country and lordship of Nova Scotia in America, and his heirs and assigns, heritably for ever, seisin of ALL and SUNDRY islands lying within the gulf of Canada, between Nova Scotia and Newfoundland, at the mouth and entrance of the great river Canada, where it falls and enters into the said gulf, (including therein the great island Anticosti): Also of ALL and SUNDRY islands lying within the said river Canada, from the said mouth and entrance up to the head, first rise and source thereof, wheresoever it is, or the lake whence it flows, (which was thought to be towards the great bay of California, called by some the Vermillion Sea,) or within any other rivers falling into the said river Canada, or in whatsoever lakes, waters or straits, by which either the said great river Canada or any of the said other rivers pass, or in which they run out: And further, of fifty leagues of bounds on both sides of the aforesaid river Canada, from the said mouth and entrance to the said head, spring and source thereof; also on both sides of the said other rivers falling thereinto; as also on both sides of the said lakes, straits or waters by which any of the said rivers pass, or in which they terminate: And likewise, of ALL and WHOLE the bounds and passages, as well on the waters as on the land, from the foresaid head, spring and source of the river Canada, wheresoever it is, or whatsoever lake it has its course from, to the foresaid bay of California, whatsoever shall be found to be the distance; with fifty leagues altogether on both sides of the said passage over against the said head of the river Canada and bay of California; and likewise of ALL and SUNDRY islands lying within the said bay of California; as also of ALL and WHOLE the lands and bounds adjacent to the said bay on the west and south, whether they be found a part of the continent or main land, or an island, (as it was thought to be,) which was commonly called and distinguished by the name of California: Moreover, of ALL and SUNDRY other lands, bounds, lakes, rivers, straits, woods, forests and others that shall have been explored, conquered or discovered at any time to come by him the foresaid Sir William Alexander, or his successors, their confederates, associates, or others in their name, or having power from

them, upon both sides of the whole bounds and passage aforesaid, from the mouth and entrance of the said river Canada, where it discharges itself into the said gulf of Canada, to the said bay of California, or islands in the seas thereto adjacent, which were not heretofore really and actually possessed by others, either the subjects of his said Majesty, or the subjects of any other Christian prince or constituted orders in alliance and friendship with his Majesty: With FULL and ABSOLUTE POWER to him the said Sir Wm. Alexander, and his foresaids, (and to no others,) their stewards, servants, and others in their name, of planting colonies and engaging in trade in the before-named places or bounds, or any part of them particularly marked out, and of expelling or debarring all others from the same; also of allocating proportions of the lands thereof to whatsoever person or persons shall seem to him fit, and upon the same terms, conditions, restrictions, and regulations within all the forenamed bounds, as he could do in Nova Scotia, by whatsoever charters or patents granted to him by his said Majesty's father, or his Majesty himself, also with such and as great privileges, liberties, and immunities in all the foresaid places or bounds, islands, and others above written, as well as in the sea and fresh water as on land, as the said Sir William Alexander had in Nova Scotia by his prior charters or patents of Nova Scotia; which privileges contained in the said prior charters, and every one of them, his said Majesty ordained to be equally sufficient and valid, and willed to be altogether of the same strength, force, and effect, as if they had severally been particularly and one by one granted and set forth word for word in the said charter, as to the not particular insertion of which in the said charter his said Majesty for ever dispensed: By which charter also it is ordained and declared, that it should in nowise be prejudicial or derogatory to whatsoever rights, charters or patents granted to the foresaid Sir William Alexander, or his aforesaid, of or concerning Nova Scotia, at whatsoever time preceding the date of the said charter, or to any head, clause, article or condition therein set forth; as also, that it should be without prejudice to any prior charter granted by his said Majesty, or to be granted at any time to come, to whatsover Baronets within Scotland of the country of Nova Scotia: And his said Majesty specially prohibited and debarred all and sundry his subjects, of every degree or condition, in any of his kingdoms or dominions, from making any plantation, or engaging in any trade in the said places or bounds, bays, rivers, lakes, islands and straits above written, or in any part thereof, without the special advice, permission and consent of the foresaid Sir William Alexander, or his foresaids; and with special power to the said Sir William Alexander, and his foresaids, of seizing, taking and apprehending all and sundry persons who shall be found to be in business and engaged in trade in any part of the said places or bounds contrary to the said prohibition, and of confiscating their ships and goods, and disposing thereof at pleasure to their own proper uses, without rendering any count or reckoning in any manner for the same, or any part thereof; and of doing all other things within all and whole the forenamed bounds or spaces, as freely and fully to all intents, purposes and ends as the foresaid Sir William Alexander, and his foresaids, could have done within the said country of Nova Scotia, or the said kingdom of Scotland, in virtue of any of the said letters patent, prior charters or patents: ALL and whole which lands, spaces or bounds, islands and others above set forth, were erected and united into one whole and free lordship, to be called of Canada, belonging and pertaining to the before-mentioned Sir William Alexander and his foresaids, heritably for ever; ordaining seisin at the said Castle of Edinburgh, or upon the soil and ground of the foresaid lands, bounds and islands, or any part thereof, to be taken by the said Sir William Alexander, or his foresaids, to be in all time to come sufficient for all and whole the forenamed lands, bounds, islands, and others above specified, or any part or portion thereof, as to which his said Majesty for ever dispensed; as in the said charter and precept of seisin inserted in the end thereof, comprehending divers other clauses, is more fully contained: As ALSO the foresaid attorney HAVING and HOLDING in his hands a certain general retour of the service of the before-named Alexander Earl of Stirling, &c. as nearest and lawful heir of the foresaid Sir William Alexander, the first Earl of Stirling, his great-great-great grandfather, expede before the bailies of the borough of Canongate, near

Edinburgh, the 11th day of October, anno Domini 1830, and duly retoured to his Majesty's chancery; and HAVING a certain special retour of the service of the said Alexander Earl of Stirling, &c. as nearest and lawful heir aforesaid, expede before the Sheriff-substitute of the sheriffdom of Edinburgh, the 2d day of July in the year first above written, and likewise retoured to the said chancery; which service includes a general service of the same kind and character; by either of which services the said Alexander Earl of Stirling, &c. acquired right to the foresaid charter, and to the precept of seisin still unexecuted, and all the other clauses therein contained; as in the retours of the said services respectively is also contained; WHICH extract charter, with the said retours, the foresaid attorney exhibited and presented to the said bailie in that part lawfully constituted as is before stated, and desired him duly to execute the command and office committed to him by the said precept of seisin; WHICH DESIRE the said bailie finding to be just and reasonable, he received the said extract charter and retours into his hands, and delivered them to me, notary-public, to be read, published and explained in the common speech to the witnesses present; WHICH I did, and of which precept of seisin, contained in the said extract charter, the tenor follows in these words: 'AND further, we have 'made and constituted, and by the tenor of our present charter we make and 'constitute
'and any one of them, jointly and severally, our bailies in that part, giving and 'granting to them, and any one of them, our full power and special warrant for 'giving, granting and delivering to the foresaid Sir William Alexander, and his 'aforesaid, or to their certain attornies, having or producing this our present 'charter, heritable state and seisin, and also actual, real and corporal possession 'of all and sundry the forenamed lands, bounds, rivers, lakes islands, straits 'or passages, and others whatsoever, generally and particularly above set forth, 'of the said country and lordship of Canada, at our said Castle of Edinburgh, or 'upon the soil and ground of any part of the foresaid lands and bounds or 'places, or in both manners, at the pleasure of the said Sir William Alexander 'and his foresaids, commanding them, and any one of them, that on sight 'hereof they, or any one of them, forthwith give and deliver heritable state 'and seisin, and also actual, real and corporal possession of all and sundry the 'forenamed lands, places or bounds, islands, rivers, lakes and others foresaid, 'generally and particularly above set forth, to the foresaid Sir William Alex-'ander and his foresaids, or to their certain attorneys, having or producing this 'our present charter, upon any part of the ground of the said lands, or at our 'Castle of Edinburgh, or in both manners, as shall appear best to him and 'his foresaids, by delivery of earth and stone to the foresaid Sir William and 'his aforesaid, or to their attorneys, having or producing this our present char-'ter at the said Castle, or upon the soil and ground of the said lands and others 'above written, or in both manners, at the pleasure of the said Sir William and 'his foresaids; which seisin so to be given by our said bailies in that part to 'the foresaid Sir William and his aforesaid, or to their attorneys having or pro-'ducing this our present charter, we, for us and our successors, decree and 'ordain to be good, lawful, valid and sufficient in all time coming, dispensing, 'like as we, by the tenor of our present charter, dispense, as to all that can be 'objected against the same, whether in form or in effect: Finally, we, for us 'and our successors, with advice and consent foresaid, will, decree, declare and 'ordain, that this our present charter, with all and sundry privileges, liber-'ties, clauses, articles and conditions above mentioned, be ratified, approved 'and confirmed in our next Parliament of our kingdom of Scotland, or, at the 'will and pleasure of the said Sir William Alexander and his foresaids, in any 'other Parliament of the said kingdom hereafter to be holden, to have the 'strength, force and effect of a decree of that supreme court; for doing which, 'we, for us and our successors, will and declare our said charter, and the 'clauses therein contained, to be a sufficient mandate or warrant, promising, on 'the word of a King, the same shall be so done and performed. In witness 'whereof we have ordered our Great Seal to be appended to this our present 'charter, before witnesses, as in others, our cousins and counsellors, James 'Marquess of Hamiltoun, Earl of Arran and Cambridge, Lord Aven and In-

'nerdaill, William Earl Marischal, Lord Keyth, &c., marischal of our king-'dom, George Viscount Duplin, Lord Hay of Kinfawins, our chancellor, 'Thomas Earl of Hadingtoun, Lord Bynning and Byres, &c., keeper of our 'Privy Seal, our beloved familiars and counsellors Sir William Alexander of 'Menstrie, our principal secretary, Sir James Hamiltoun of Magdalenis, clerk 'of our rolls, register and council, Sir George Elphingstoun of Blythiswod, our 'justice-clerk, and Sir John Scot of Scottistarvett, director of our chancery, 'Knights; at our palace of Whythall, the 2d day of February, in the year of 'our Lord 1628, and of our reign the third.' AFTER READING, PUBLISHING and EXPLAINING which extract charter, and precept of seisin and retours, in the common speech, to the witnesses present, the foresaid Thomas Christopher Banks, bailie in that part aforesaid, again received the said extract charter and retours into his hands, and in virtue and by the strength of the same and of the office of bailiary committed to him, GAVE and DELIVERED to the before-mentioned Alexander Earl of Stirling, &c., heir aforesaid, for himself, his heirs and assigns, heritable state and seisin, and also actual, real and corporal possession of ALL and SUNDRY the forenamed lands, bounds, rivers, lakes, islands, straits or passages, and others whatsoever, generally and particularly above expressed, of the said country and lordship of Canada, after the tenor of the aforesaid charter, the union and dispensation contained in the same, and the said precept of seisin above inserted, in all points by delivery of earth and stone of the ground of the said Castle into the hands of the said Ephraim Lockhart, attorney foresaid, for and in name of the before-mentioned Alexander Earl of Stirling, &c. WHEREUPON, and upon all and sundry the premises, the foresaid attorney asked instruments from me, notary-public. THESE THINGS WERE SO DONE at the said Castle of Edinburgh, within the outer gate there, in virtue of the union and dispensation aforesaid, between the hours of eleven forenoon and twelve noon, on the day of the month, in the year of our Lord, and of the reign of our sovereign lord the King, above written, IN PRESENCE of David Byars, clerk in the office of the sheriff-clerk of Edinburgh, and William Wilson, writer there, witnesses to the premises specially called and required, and this public instrument with me subscribing.

AND I truly, John M'Gregor, clerk of the diocese of Edinburgh, and notary-public, by royal authority, and by the Lords of Council and Session, according to the tenor of the act of Parliament admitted, because at all and sundry the premises, whilst they were, as is before stated, so said, done and performed, I was, together with the before-named witnesses, personally present, and all and sundry the premises I saw, knew and heard so performed and said, and took a note of them; therefore I, being called and required, prepared therefrom this present public instrument, by another hand, upon this and the two foregoing pages of parchment, duly stamped, faithfully written, and have rendered it in this form of a public instrument; and in faith, corroboration and testimony of the truth of all and sundry the premises, have signed and subscribed the same with my sign, name and surname, used and wont.

Verum crede.
JN. M'GREGOR, N. P.

Dav. Byars, witness.
Wm. Wilson, witness.

At Edinburgh, the twelfth day of August, one thousand eight hundred and thirty-one years, this sasine was presented by Ephraim Lockhart, writer to the signet, and is recorded in the one thousand six hundred and forty-sixth book of the new General Register of Sasines, Reversions, &c. and on the 111, 112, 113, 114, 115, 116, 117, 118, and 119th leaves thereof, conform to the act of Parliament made thereanent in June 1617, by me, depute-keeper of said Register.

AR. WISHART.

TRIAL OF LORD STIRLING:

BEING

PART II. OF THE VINDICATION

OF

THE RIGHTS AND TITLES,

POLITICAL AND TERRITORIAL,

OF

ALEXANDER, EARL OF STIRLING AND DOVAN,

HEREDITARY LIEUTENANT GENERAL

AND

LORD PROPRIETOR OF CANADA AND NOVA SCOTIA.

BY JOHN L. HAYES,
COUNSELLOR AT LAW.

WASHINGTON:
GIDEON & CO., PRINTERS.
1853.

PEDIGREE—*shewing the Descent of the* EARLDOMS OF STIRLING AND DOVAN, *from the Creation of the Titles to the present Time.*

ANDREW ALEXANDER,
of Menstrie,
ninth in descent from Alexander M'Donald
second son of Donald, King of the Isles.

1. Alexander Alexander, of Menstrie, ob. 1594.
2. John Alexander, (From whom Gen'l Alexander failed to prove descent.)

1. Sir William Alexander, of Menstrie, Knight, Master of Requests to King James VI.; born 1580; knighted 1614. = Janet, daughter and heir of Sir William Erskine, Knight, Bishop of Glasgow, and cousin-german of John, 6th Earl of Mar, Regent of Scotland.

2. Andrew Alexander. = Margaret Alexander, married Mr. James Gordon, Keeper of the Signet.

CREATED
- 12th July, 1625, *Hereditary Lieutenant*, &c., of Nova Scotia; also *Premier Baronet*, with precedency from 21st May, 1625.
- 4th Sept. 1630, *Lord Alexander* of Tullibodie, and *Viscount of Stirling*.
- 14th June, 1633, *Viscount of Canada* and *Earl of Stirling*.
- 30th July, 1637, *Earl of Dovan*.
- 7th Dec. 1639, Charter of Novo-Damus.

Privy Councillor and Secretary of State, 1626; Keeper of the Signet, November, 1627; a Lord of Session, 28th July, 1631.—Died at London in February 1640, and buried at Stirling, 12th April following.

1. William, Viscount Canada, died at London (vitâ patris) in March, 1638, and was buried at Stirling. = Margaret, Daughter of William, Marquis of Douglas, died 1st Jan. 1660.

2. Sir Anthony, Master of the King's Works in Scotland, married a daughter of Sir Henry Wardlaw, of Pitreavie, Bart.—Died at London, August, 1637, and was buried at Stirling.—Left no issue.

No succession to the honours.

3. Henry, 3d Earl of Stirling, succeeded his nephew, William, 2d Earl, ob. ante 16th August, 1644. = Mary, daughter and co-heir of Sir Peter Vanlore, of Tylehurst, co. of Berks, Bart.

Elizabeth Maxwell, of Londonderry, 2d Wife.

4. John, Settled in the North of Ireland, ob. 1666. = Agnes, 1st Wife, daughter and heir of Robert Graham, of Gartmore, Esq. representative, in the second branch, of the Earls of Menteith, and lineally descended from King Robert Bruce.

5. Charles, married Ann Drury.

6. Ludovick, died in infancy.

7. James, married Grisel Hay.

1. Jane, = 1st. Hugh, Viscount Montgomery, of the Ardes. 2nd. Major-General Munroe.
2. Mary, = Sir William Murray, Baronet.
3. Elizabeth, died unmarried.

William, 2nd Earl of Stirling, died about May, 1640, aged eight years.

End of the Male line of the first Son.

1. Catharine, = Walter, Lord Torpichen.
2. Jane.
3. Margaret, = Sir Robert Sinclair, of Longformacus.

Henry, 4th Earl of Stirling, ob. 1690. = Judith, daughter of Robert Lee, of Binfield, county of Berks.

Jane, ob. ante 1739.

John, died at Templepatrick, county of Antrim, 19th April, 1712; buried at Newtown Ards. = Mary, daughter of the Rev. Hans Hamilton, died June 1st, 1724, aged 63 years. Buried at Bangor, co. Down.

Succession of the Male line of the fourth Son.

Janet, only daughter.

Charles, died without issue.

Margaret, ob. s. p.

1. Henry, 5th Earl of Stirling, married Elizabeth, widow of John Hobby, Esq.; died, without issue, at Ewell Green, county of Surrey, 4th December, 1739, and was buried at Binfield.

End of the Male line of the third Son.

2. William.
3. Robert.
4. Peter.

Omnes ob. s. p. ante 1730.

1. Mary, = ... Phillips, Esq. of Binfield, Berks. Issue extinct.
2. Judith, = Sir Wm. Trumbull, Kt. ob. 1716.
3. Jane, ob. s. p.

John, 6th Earl of Stirling, succeeded his cousin, Henry, 5th Earl, 4th December, 1739; born at Antrim, 30th September, 1686, died at Dublin, 1st November, 1743. = Hannah, daughter of the Rev. John Higgs, of Chadwich, county of Worcester, great-grand-daughter of Dr. Griffith Higgs, Dean of Lichfield, Temp. Car. I. ob. 1768.

1. Mary, died unmarried.
2. Elizabeth, = John Mee Skinner, Esq.

1. John, 7th Earl of Stirling, *de jure*, born at Dublin, 26th January, 1735–6 died unmarried, 29th December, 1765.

2. Benjamin, 8th Earl of Stirling, *de jure*, born at Dublin, 11th March, 1736–7; died unmarried, 13th April, 1768.

Last Heir Male of the Body.

1. Mary, Countess of Stirling, *de jure*, born at Dublin, 1st October, 1733; died unmarried, at the Larches, April 28th, 1794.

1st Heir Female of the last Heir Male.

2. Hannah, Countess of Stirling, *de jure*, succeeded her sister, 1794; born at Dublin, 8th January, 1740–1; died at her house, in the College Green, Worcester, 12th September, 1814. = William Humphrys, of the Larches, county of Warwick, Esq., died at Verdun, in France, 1st May, 1807.

2d Heir Female of the last Heir Male.

ALEXANDER,
9th and present
EARL OF STIRLING AND DOVAN. = Fortunata, daughter of Signor Giovanni Bartoletti, of Naples.

Heir Male of the Heir Female.

Alexander, Viscount Canada. | Charles Louis. | Eugene John. | William D. S. | John Hamilton. | Lady Angela E., Wife of W. W. Pearson, Esq.

TRIAL OF LORD STIRLING.

The remarkable fact cannot have escaped the notice of the public that, on the very day succeeding the one on which the notice of Lord Stirling's claims appeared in the New York Herald, long and most elaborately prepared attacks upon Lord Stirling appeared simultaneously in several New York papers. That these attacks, prepared with so much care, and displaying so minute a knowledge of a most complicated case, could have been prepared after the publication in the Herald, no one can believe. A clairvoyance, more mysterious than any knowledge of the "Satanic Press," alluded to in one of these attacks, had foreseen the announcement of Lord Stirling's case, and weeks of anxious labor had been devoted to expose the "transparent humbug." But more extraordinary even than the celerity with which these rejoinders are given, is the mysterious knowledge exhibited, in one article at least, of facts and circumstances which never have been published in America, of events even which had never transpired beyond Scotland, and of rare books which are not found in any of our public libraries. It cannot be imagined for a moment that any of Lord Stirling's former friends in this country have been so base or insane as to betray his confidence. How, then, are we to account for this mysterious knowledge—this holy horror of fraud and imposture, so unusual in the most violent of the assailing papers; this undue zeal to expose an imposture which, according to their showing, is only ridiculous? No sooner was it known in England that Lord Stirling had embarked for this country, than sixty pages of Blackwood, the most venal and violent of the Tory magazines, are devoted to prejudice the American public by a false and distorted history of the infamous forgery trial which had occurred thirteen years before. No sooner does an American paper vindicate his rights, than a masked battery is opened upon Lord Stirling here. How can this be explained, except by supposing that the power of that mighty Government which has so vital an interest in wresting from him his formidable rights, and has pursued him with such vindictiveness in

Scotland, England, and France, has followed Lord Stirling across the Atlantic, and is speaking even through the American press! Will not these things open the eyes of the American people? Will not they consider that a cause which is worthy of so formidable an opposition must possess inherent elements of strength?

We shall not attempt to answer *seriatim* the charges in Blackwood or the American papers. The positions maintained in a pamphlet, entitled "A Vindication of the Rights and Titles of Lord Stirling," that these rights and titles have been judicially established by courts of competent jurisdiction, and have been officially recognised on the most solemn occasions, have never been refuted.

In that pamphlet, prepared by Lord Stirling's counsel, no attempt was made to mislead the public as to Lord Stirling's position. It was distinctly stated that he was opposed by the British Government, and had been for years pursued by the officers of State with a vindictiveness almost unparalleled. For how could he be here setting up claims to the fisheries and the lands of Canada and Nova Scotia, except in open antagonism to the British Government?

No attempt was made in the statement of Lord Stirling's counsel to keep out of sight the trial for forgery, for it has always been intended to present the full history of this trial as Lord Stirling's strongest claim upon the sympathy of a people who are quick to rouse themselves at a tale of grievous oppression. The principal object in this paper is to give to the world, for the first time, the true narrative of this remarkable trial, which is destined to take its place in history. But before entering upon that narrative, we will proceed to refute the main positions of the British authorities, or their mouth-pieces, in Blackwood and some American papers.

I. It is asserted that the Earldom of Stirling and the estates went only to heirs male, while Lord Stirling, originally known before his recognition as a Peer as Mr. Humphrys, claimed through a female.

This objection, which was *never* urged before the civil courts in Scotland in the attempts of the officers of State to reduce his services, or defeat his rights as heir to the Earl of Stirling, has been at no time brought forward, except by the Crown counsel in their address to the jury on the forgery trial, and then only to convey the impression that a charter which had never been used by Lord Stirling to prove his heirship, had been fabricated to overcome this difficulty in his rights of

succession. This in itself is a sufficient answer to the objection. The limitation of all the American property by the charters of 1621, 1625, and 1628, was the same, namely: "To Sir William Alexander, *heredibus suis et assignatis hereditarie*," (his heirs and assigns heritably.) There is in these charters no limitation to male heirs. Every Scotch lawyer knows that the effect and meaning of this limitation has always been held, according to the Scotch law of descent, to carry the enjoyment of the subject limited, in this case the estates in Canada and Nova Scotia, in the first instance, to the heirs male of the body of the original grantee, whom failing, to the heirs female of the last heir male in a similar course of succession. The right of Lord Stirling to the American estates is established by the common law of Scotland, and has never been seriously denied. He has uniformly founded all his proceedings in the different services on the charters of 1621, 1625, and 1628, which were granted to his ancestor, Sir Wm. Alexander, before his elevation to the peerage, which charters are all on record.

It is true that the patent of 1633, which created Sir William Alexander Earl of Stirling and Viscount of Canada, limited the title to his male heirs, and thus the American property was granted by the charters to a more general and extended series of heirs than the titles.

The only question with which we have any interest, is the succession of the lands and rights in America. But Lord Stirling's right to his titles, though this is comparatively of little importance, stands on an equally strong though different basis.

In 1637, by a privy seal precept, the Earl of Stirling was created Earl of Dovan. The limitation in this case was to his eldest lawful son and his heirs male lawfully procreate, whom failing, to the heirs male and assignees whatsoever of the said William Earl of Stirling. Now, by the law of Scotland, it has been decided that where an honor or property is limited *heredibus masculis et assignatis*, the general heirs being included in the term *assignatis*, the heirs male of the body first succeed, and when they have failed, then the heir female, comprised in the word "*assignatis*" of the last heir male, becomes entitled to the succession. This was established in the House of Lords in the Polwarth case, precisely similar to this. (See Dod's Peerage, p. 409.)

Thus by charters which are undisputed, and by laws of succession which cannot be denied, the Earl remains heir in special of tailzie and provision to the totality of the estates, American and Scotch, and to the Earldom of Dovan.

We come to a statement of facts wholly unimportant as affecting Lord Stirling's rights to his American property, which have been denied, but which are susceptible of overwhelming proof. The eldest son of the Earl of Stirling having died in 1638, the Earl made a surrender of all his honors and estates into the hands of King Charles, who, by a charter of Novo damus, under the great seal of Scotland, dated the 7th December, 1639, regranted them to the Earl, "to hold to himself and the heirs male of his body, whom failing, to the eldest heirs female, without division of the last of such heirs male, and to the heirs male of the bodies of such heirs female respectively." It is admitted that the original charter has disappeared, and is not found on record. But it can be shown where it was at different periods deposited, who were the possessors of it, where it was once on record, what was the tenor of its limitations, and the *casus omissionis*.

That the charter of Novo damus of 1639 once existed is established by historical evidence wholly independent of the other proofs which Lord Stirling has adduced, and which will hereafter be referred to. There is evidence—all of which we need not refer to here—that the original charter of Novo damus was in possession of General Wm. Alexander, known in our war of independence, who at one time set up claims to the title. It is believed that after his failure in the House of Lords he brought this charter to this country, and that, according to the deposition of some of his descendants, it was burnt with other papers in his house at Albany. Horace Walpole, in his Anecdotes on Painting, vol. II. p. 19, under the head of Norgate, says: "The best evidence of his abilities is a curious patent lately discovered. The present Earl of Stirling (General Alexander, to whom Walpole courteously gave the title which he claimed) received from a relation an old box of neglected writings, among which he found the original commission of Charles the First appointing his lordship's predecessor, *William, Earl of Stirling*, commander-in-chief in Nova Scotia, with a confirmation of the grant of that province made by James the First. In the initial letter are the portraits of the King sitting on the throne, delivering the patent to the Earl; and round the border, representations in miniature of customs, huntings, fishings, and productions of the country, all in the highest state of preservation, and so admirably executed, that it was believed to be of the pencil of Vandyke; but, as I know of no instance of that master having painted in this manner, I cannot doubt but it is the work of Norgate, allowed to be the best illuminator of that

age, and generally employed, says Fuller, to make the initial letters of patents of peers and commissions of ambassadors."

Norgate was appointed Windsor Herald in 1633, and soon after, illuminator of royal patents. From the date of his appointment as illuminator of royal patents, it is clear that the patent must have been one granted after 1633. The charters of Nova Scotia granted to Sir William Alexander were, the one eight years, and the other twelve years, prior to 1633. The one alluded to, then, could only be the original charter of Novo damus of 1639, in which all the previous grants were recited and re-confirmed.

The succession of the estates in 1640, according to the terms of the charter of 1639, proves incontestably the existence of the charter. The first Earl died in February, 1640, and was succeeded by his infant grandson, only son of his deceased eldest son, William, Viscount Canada. This William, second Earl, survived his grandfather scarcely six months, when he died, under eight years of age, leaving three sisters, his heirs portioners, by the Scotch common law, *i. e.*, these heirs would have been entitled to divide his estates had they not been limited by an entail which cut them off, and gave their inheritance to their uncle Henry, who, in fact, succeeded as third Earl. Again, some creditors of the first Earl presented a petition to Parliament for leave to commence certain legal proceedings against the third Earl. In this petition they thus describe him, "Harrie, Earl of Stirling, son and heir male of tailzie and provision (or of entail) to umquile William, Earl of Stirling, his father and brother, and heir male of tailzie and provision to the said William, Lord Alexander, &c." The application of the creditors in charging Earl Harrie as *heir male* of tailzie and provision, in the very terms of the charter of Novo damus, not only to his father, the first Earl, but to his brother, the deceased William, Viscount Canada, puts on the journals of Parliament the evidence of the notoriety of the charter; for there was not any record of any entail of the *whole* of the Stirling estates to warrant such a description, if the charter of Novo damus did not exist.

All matters relative to succession of honors are carefully preserved as traditional knowledge by the nobility of Scotland. The former existence of this charter, and the nature of its limitations, were perfectly known to the Peers of Scotland; so that, when Lord Stirling took his seat as Peer in 1825, no objection to his right to the Earldom of Stirling was raised by his associate Peers. On the contrary, he was asked

on every side why he had not resumed his rank at an earlier date, his right as the grandson of the Rev. John Alexander, sixth Earl, being well known to them. He took his seat unquestioned, just as the present Duke of Wellington has taken the seat of his late father. By voting as a Peer for a period of twelve years, he became *de facto* Earl of Stirling; for if a Scotch Peer takes his seat by virtue of a royal proclamation unopposed, and votes at elections, though it were in error, his title is as much acquired thereby, as were, under writs of summons in the time of Charles the 1st, the title of Baron Strange, by which James, eldest son of William, Earl of Derby, and the title of Lord Clifford, by which Henry, eldest son of Francis, Earl of Cumberland, were respectively summoned to Parliament. These baronies were at the time presumed to be vested in the fathers of the young men so summoned; but although it was afterwards ascertained that the said baronies were not so legally vested, yet as the persons summoned had taken their seats, the House of Lords was obliged to admit that the writs operated as new creations. (See Cruise on Dignities, p. 43.)

Lord Stirling was not bound to go to the House of Lords for recognition of his title. This title is as firmly founded as that of the Earl of Newburgh, the Earl of Cassilis, the Earl of Dundonald, the Earl of Kintore, the Earl of Breadalbane, the Earl of Stair, and many others who assumed their titles on the deaths of distant cousins; none of whom have gone to the House of Lords for confirmation of title. (Vide Debrett's Peerage and Lodge, *passim.*)

Eminent counsel among others, James Wilson, a celebrated Scotch advocate, now chief justice of the Mauritius, have dissuaded Lord Stirling from going to the House of Lords. Judge Wilson in a written opinion now before us says, "In my humble opinion, were he, (Lord Stirling,) to go to the House of Lords by petition for allowance of dignity, he would be confessing a doubt of his own character, surrendering the rights of the Scotch nobility, and recognising a jurisdiction in this particular not made imperative by the treaty of union. Still, a party claiming the dignity of a Scotch Peerage may, if he choose, try the experiment, whether the House of Lords will entertain his claim, or decide upon it; and there are instances in which the party has so applied, and the House so acted. But as far as Scotch authorities enable me on principle so to judge, I consider such applications, except in cases utterly distinct and different from the present, to have been merely

optional in the party, and probably resorted to from motives of convenience.

If the present Earl of Stirling has formally, legally, and on sufficient evidence, proved his character, as *ex facie* appears from the service and retour, &c., he, until successfully challenged by a competitor nearer in blood, is and must remain the Earl of Stirling, whether he seeks for and obtains from the House of Lords the allowance of dignities or not." The opinion of—

JAMES WILSON.

That the charter of Novo damus is not registered in Scotland is no objection to Lord Stirling's right to his title, even if he claimed under that charter alone. By referring to the return of the Lords of Session to the order of the Lords Spiritual and Temporal in Parliament assembled, of date June 12, 1739, it appears that, at the period in question, searches were vainly made for the patents of creation to *numerous* Scotch Peerages; and among others those of Ochiltree, Borthwick, Spynie, Cardross, Jedburgh, Maderlzy, Bargany, had entirely disappeared. It also appears that the patent of Lord Forester, dated in 1651, was not entered in the register till 1683; and that of the Earl of Breadalbane, sealed in 1652, had never been registered at all. The patent of Lord Ruthven is stated to have been burnt when the family residence was destroyed by fire; and although there was no record of it, no vestige of any authentic proof of its limitations, yet the ancestor of the present Lord succeeded on the demise of the then existing Baron, without heirs male, unchallenged to the honor. The enjoyment of these and other titles was, as in the case of Lord Stirling, secured by services of heirship, and by voting without challenge at elections of Peers.

We repeat *that the right to the estates in Canada, Nova Scotia, and the fisheries, resting, as it does, on existing and undisputed charters, is wholly independent of the* title; we have dwelt thus long upon this point only to show that Lord Stirling has assumed no position, either with respect to rights to lands or titles, on which he is not perfectly impregnable.

II. It is asserted that the son and heir of the first Lord Stirling granted all the possessions of the family in America to De la Tour. This statement is only thus far true:

In 1630 a grant was made by Sir Wm. Alexander to Sir Claude

St. Estienne, Knight Lord of La Tour, and his brother Charles de St. Estienne. This grant is recorded in the records of Suffolk county, Mass., lib. No. 3, fo. 265. The grant covered only a portion of the southwestern coast of Nova Scotia. This grant was on condition that this Knight De la Tour and his brother should be good and faithful vassals of the sovereign Lord the King of Scotland. The condition was not complied with, and the lands reverted to the grantor. There is no evidence of any other deed. The grant to De la Tour was in 1630. In 1632, King Charles, by his royal missive, sending a signature for ten thousand pounds as a compensation for the surrender of Port Royal, says, "it is in nowise for quitting the title, right, or possession of New Scotland, or of any part thereof, but only for the satisfaction of the losses, &c.; and we are so far from abandoning of that business, as we do hereby require you and everie one of you to afford your best encouragement for farthering of the same," &c.

Moreover, M. D'Anville, the accurate French geographer, in his great chart of North America, published in 1735, and the memoir relative thereto, says: "Nova Scotia, usurped by the French in 1603. They were forced out by Orgal in 1613. Granted in 1621 to Sir Wm. Alexander, and the boundaries were St. Lawrence River on the north, and on the west St. Croix. By a second grant in 1635 it was enlarged to the Kenebec River, to co-extend Nova Scotia with Acadia." Sir William Alexander could not have wanted a grant in 1635 to enlarge a country which he had disposed of in 1630.

III. It is asserted that the rights of the Stirlings to Nova Scotia and Canada were lost by the conquest of these countries by France; that they were restored to Great Britain by the treaty of Utrecht of 1713 on a new basis, as if they then became British for the first time.

By the very terms of the charters no effective cession of those countries could have been made without Sir Wm. Alexander's assent. The King had renounced all lands, privileges, jurisdiction, &c., "together with," following the terms of the charters, "all right, title, &c., which we or our predecessors, or successors, have had, or any way can have, claim or pretend to." This point was very gravely considered by lawyers the most distinguished for their knowledge of national law. We have before us the joint opinion of the distinguished Privy Councillor, the Right Honorable Stephen Lushington, D. C. L., Judge of

the Consistory Court, and Judge of the High Court of Admiralty, &c., and Hon. James Wilson, now Chief Judge at the Mauritius.

After giving their opinion that the rights of Lord Stirling had not been lost by *non user*, and that the estates had not been alienated by his ancestors, the learned counsel cautiously proceed to "consider the effect of the territory of Nova Scotia and Canada having by conquest and cession passed into the power of another State."

"We are of opinion," say they, "that the additional information with which we have been furnished has greatly diminished some of the difficulties which rendered the result uncertain. The difficulties diminished are those arising from the treaties; and the case is greatly assisted in another respect by the reservation in King William's charter. In these respects the case certainly stands more favorably. It is held that, if a colony be conquered by the enemy during war, and given up at the peace by treaty, all rights existing previous to the conquest revert to the proprietors, with some exceptions not material to this case. If a colony be ceded by treaty, the right of the Crown ceding such colony is wholly extinguished. The rights of individuals, as we formerly stated, depend on the State to which the cession is made; and if hereafter the same colony should be given back by treaty to the State which formerly held it, that State will take it back precisely as it stood at the time when so last ceded, free from all rights, titles, and encumbrances which may have existed at the time of the first cession, and annihilated before the retrocession.

"Presuming that the claim of the grantees is not extinguished by the different cessions, we think that nothing appears to have been done by the Crown or Parliament of Great Britain which can have the effect of destroying those rights."

IV. It is urged that the proceedings by which Lord Stirling was judicially served heir to Sir Wm. Alexander are entitled to no weight.

It is stated in the longest and most serious attack made on Lord Stirling, and one containing such minute references to circumstances not known out of Scotland, although distorted and falsely stated, that it bears intrinsic evidence of its foreign origin, as follows: "In Scotland, by old practice, on going through certain formalities, a man who claims title or land, or both, may be served heir before the macers, (officers in attendance on the Supreme Court,) on putting in his claim, producing documents which were not examined, except when they

attempted to obtain property and were challenged; and this service (usually made with a free circulation of the whiskey bottle) obtained a public and judicial certificate of his pedigree, which, if subsequently questioned, has to be disproved by evidence. Mr. Humphrys, before this drunken tribunal, (of macers,) whose occupation in such matters has since been abolished, thus asserted his descent," &c. Further on it is said, Mr. Humphrys had really been so served "before the macers."

In Bell's Dictionary of the Law of Scotland, under the word "macers," is the following passage: "Brieves for serving heirs where the Judge Ordinary is incompetent, or where expediency renders it necessary, were formerly directed to the macers of the Court of Session as the sheriffs in that part, under a special commission from the Chancery office. This practice, however, was abolished in 1821; and by statute 1 and 2, George IV, c. 28, §11, those services which were in use to be conducted before the macers are directed to proceed before the sheriff depute of Edinburgh, or his substitute, under a special commission from Chancery, similar to that in virtue of which the macers formerly acted."

Lord Stirling's services were commenced and completed, one in 1826, one in 1830, and two in 1831; each before a jury of fifteen, all under the amended system established in 1821, and *none of them before the macers.* Of the last jury, before whom the most important service was made, two were eminent advocates, ten others lawyers well known and respected, and the three others a distinguished physician, an heir to a baronetcy, and a respectable accountant. Even Lord Meadowbank, who five years afterwards figured so disreputably in the forgery trial, on an application for a trial by jury in the civil case of reduction of the services, in giving the decision that there should be no jury trial, bore testimony to the high character of this jury. He says: "After fifteen gentlemen, forming the respectable jury empannelled for Lord Stirling's services, had given their verdict, as they appeared on this record, it would be inconsistent to submit those verdicts to the revision of twelve men, who might be selected from the shopkeepers of the city."

V. It is said that there are other descendants of Sir William Alexander who are better entitled to the estates and honors.

Those mentioned are the heirs of Gen. Alexander, of revolutionary

memory, and the late Marchioness of Downshire. We meet this objection at once by referring to the four services by which the present Lord Stirling was served heir without a competitor. With regard to the pretensions of the heirs of Gen. Alexander we remark, that Gen. Alexander did not claim to have descended lineally from the first Lord Stirling, but from a collateral branch of the family, and that his claim to the peerage was rejected by the House of Lords because he did not show that the lineal descendants were extinct.

In 1840, after the forgery trial, which we shall hereafter describe, Mr. Watts, a grandson of Gen. Alexander, undertook to establish the rights of his family to the Stirling titles and estates. He presented his papers to the most eminent counsel in London, and paid £200 for an opinion. They advised him that he did not show a descent from the first Earl of Stirling, and that his papers went to confirm the rights of the present Earl. We have before us the letters of Mr. Watts, written after he had abandoned his claim, addressing Lord Stirling by his title, promising to place in his hands the documentary proof upon which he had relied.

The Marchioness of Downshire was unquestionably a lineal descendant of the first Earl; and one of the strongest proofs of the rights of the present Lord Stirling is the fact that, although an undoubted descendant of the first Earl, and the wife of a rich and powerful peer, she has never appeared to compete in his services or has brought a suit to reduce them. Lord Stirling has repeatedly and publicly, but in vain, challenged the late Marquis of Downshire, representing his mother, to compete with, or try by a legal issue, who was the nearest heir. The refusal of other descendants of the first Earl to meet this issue is a distinct acknowledgment that the present Earl of Stirling has a legal right to the honors of the family.

Finally, let us point out as evidence of the spirit of these attacks on Lord Stirling that his opponents persist in calling him Mr. Humphrys, although they knew well that, previous to assuming his title, he obtained from King George IV his royal license to take the name and arms of Alexander. This taking of the mother's name is a common practice in England when the mother happens to be an heiress.

We have stood long enough on the defensive. The accusers shall now become the accused. We will give a narrative of political oppression such as the records of the Star Chamber cannot parallel. This true history is all the reply that need be given to Blackwood. We ask our readers to look on that picture and on this, and we will abide by their verdict.

Let the position of Lord Stirling be remembered. He claimed under royal charters the right of ownership and government over England's most cherished colonies. He aimed to seize the brightest jewels of the British Crown. All the pretences first set up against these claims, some of which we have already considered, were found so frivolous that they could not be sustained. Although Lord Stirling's position had been fully recognised before the extent of his claims was known, *political necessity* demanded his ruin. The task was a formidable one for the Crown. His position seemed impregnable. His heirship and title had been acknowledged by the English Government, through the Lord Chancellor, Lyndhurst, two Prime Ministers, Earl Grey and Lord Melbourne, Lord Stanley, Secretary of the Colonies, the Lords of the Treasury, and the Lords of the Committee of the Privy Council, which last was the act of the King in Council. It had been established according to Scottish usage and precedent. Sixty intelligent men had pronounced upon his condition. The sympathies of the people were with him. Their hereditary knowledge of the descent of ancient families, no where so well preserved as in Scotland, had satisfied them as to his rights; and it may be remarked that the popular sympathy was with him to the very last. The burghers of Stirling had welcomed him to the seat of his family, and had presented him the freedom of the city. He had been invited to appear at the gathering of the clans Alexander and McAllister, and assume his position as chieftain. The Baronets of Nova Scotia were about to call him to his place as the head of their order. The broadest domain possessed by a subject was his right; the proudest place in the peerage of Scotland, and precedence as hereditary viceroy of the nobility of England, was his inheritance.

"A bold stroke" to save these colonies was that of the officers of State when they determined, under the shelter of the ermine, to outrage law and justice, and by legal forms to oust Lord Stirling from his just rights.

The first act was to bring a suit in the name of the Crown to reduce his services, in defiance of the maxim of Scotch law, that "the Crown refuses no vassal," and the well settled principles of law that no one could challenge the service who did not claim to be nearer in blood, and a direct violation of the charters whereby the Crown had surrendered all right to the territory.

This suit was brought in May, 1833. From that remarkable fear of the influence of the Crown, which seems to have palpably characterized all the acts of his counsel in Scotland, Lord Stirling was not advised, as he should have been, to take no other notice of the summons of reduction than pleading that the Crown had no right to reduce his services. The opinion expressed by the Chancellor and Ex-chancellors afterwards in the House of Lords, in 1845, that the Crown had no right to reduce his services, shows that he should have rested firmly on the *res judicatas* of the completed services, and the protecting clauses of the charters of the family. If this had been done, the Government would have been baffled, and the proceedings commenced by its servile adherents in Scotland would have fallen to the ground. Most unfortunately, the courage or sagacity to pursue this course was wanting, and the cause went on according to the will of the Crown. Meanwhile Lord Stirling was doomed to be "tormented, and handed over to chicaners, who deal in all the fatal subtleties of a jurisdiction worn out by time and fallen into decay."

Months and years passed away. The expenses of the cause went on increasing. Delays succeeded delays; for the purpose of the Government was accomplished by keeping the cause in court. But Lord Stirling, strong in the knowledge of right, *tenax propositi*, firm in purpose as only a just man could be, and fearless of the tyranny of the Crown, well knowing, too, the marvellous traces which truth leaves of herself, continued his researches for new documents and proofs in Ireland, America, and France. These proofs were exhibited before the court, and were so overwhelming, that the officers of State were staggered. As Blackwood acknowledges, "*the documentary evidence, if genuine, established his claims irrefragably.*"

The principal of these documents, obtained by him in France, was filed in court by Lord Stirling only for the purpose of getting an order from the court for a commission to France to verify the French documents, alleged to be *noviter venientes*, according to the Scotch law; a thing which obviously could only be done in the country where they

were known, and in whose language, and by whose countrymen, they were written.

Again and again did Lord Stirling press for a commission. This reasonable request was most unjustly refused; for the officers of State believed the documents genuine, and some of them congratulated Lord Stirling's law agents for having such irrafragable proofs of their client's rights.

If the officers of State had seriously doubted the genuineness of the French documents, they would have submitted them to an examination in France, where the imposture, if it existed, would instantly have been exposed. The judges in the Crown's interest evidently feared to assume the responsibility of deciding against Lord Stirling in the face of these overwhelming proofs. They dared not risk the the result of a commission to France, where the authenticity of the documents would have been established. The officers of the Crown ventured, therefore, upon the hazardous step of endeavoring to make them appear forgeries. In order to build up and fortify this shameful accusation, they pursued a series of singular manœuvres which we will hereafter expose, and finally concluded, after much hesitation, to pursue the desperate and illegal course of commencing a criminal suit against Lord Stirling for the forgery of documents which they feared to encounter in the civil court.

When this course was resolved upon, the officers of State had none of the obstacles in their way which would have intervened in England, for the Lord Advocate of Scotland is not only the public prosecutor, but has the power which in England and this country belongs to the grand jury. Thus any one can be put on his trial in Scotland at the will or caprice of the Lord Advocate, and thus the innocent accused is deprived of the first defence against the tyranny of the Crown.

Lord Stirling was warned of the intention of the officers of State, but his English and Scotch legal advisers assured him that it was impossible that the judges of the court of session, having never pronounced a judgment for or against his rights, would permit the intervention of a criminal action before they had themselves come to a decision. "The English laws," wrote his London adviser, "would afford your Lordship efficacious protection under such circumstances." "Our laws," said the Scotch agent, "have provided against the possibility of an attempt to deprive any person engaged in litigation of his liberty at the instance of his adversary. It is what they do not tolerate

under any circumstances, pending a suit undecided in the civil court." These words of the Scotch and English counsel were all vain. It was resolved that the criminal issue should proceed, in outrage of all constitutional rights.

Mark how oppression is stamped on these proceedings at the very outset. A commission to examine the authenticity of French documents in France, where alone they could be properly examined; a commission demanded in pursuance of the laws of Scotland, and the practice of the court of session, is refused. The Crown, a party in a suit, involving some of its most valuable rights, takes the cause from a civil court, and to throw disgrace upon documents which it cannot otherwise impeach, incriminates them in a criminal court. The cause is kept for months in the civil court without a decision, that the means for preparing the criminal prosecution may be fully perfected. The investigation is brought from Paris, where the only proofs could be found, but where the Crown influence could not prevail, to a distance of seven hundred miles from the place where the only witnesses competent to testify in such case resided, and whither the witnesses, whose age and position would throw the most light on this investigation, could not be brought.

This was but the first step in this arbitrary business, which was quickly followed by other outrages.

On the morning of the 14th February, 1839, Lord Stirling was arrested in his own house at Edinburgh. He was taken by the sheriff's bailiffs to the county hall, where the sheriff holds his court. In the mean time, a son of Lord Stirling had communicated with two of his counsel, who indignantly demanded permission to see him. This permission the Crown officers refused; and Lord Stirling's counsel had no other resource than to protest in writing against a tyranny which was sanctioned neither by the laws of the country nor the practice in criminal proceedings.

What follows will hardly be believed. Lord Stirling, unsupported by counsel or his friends, was submitted to a rigorous examination by the sheriff on questions prepared by the Crown counsel. He believed himself compelled to answer the insidious questions of his adversaries, and although he should have been silent, answered with boldness and dignity. At eight o'clock in the evening he was allowed to take some refreshment, and after two hours suspension the examination proceed-

ed, and was continued till midnight, when he was committed to prison. Four days afterwards he was brought again to court at ten o'clock in the morning, and submitted to repeated examinations, which were continued till two o'clock on the following morning.

In the mean time the sheriff's officers demanded from Lord Stirling the keys of his cabinets, and a written authority for the officers to have free access to the deed chests, boxes, writing desk, and other repositories in his house; and this authority, with the keys, he was compelled to give, as he was assured that otherwise they would break open the doors and force the locks. The officers of the law ransacked the house of their victim from attic to cellar, and seized all papers which they thought important; another act directly in contravention of the constitution and laws, which secure the house of a subject from violation, except in cases of treason.

These acts, be it remembered, occurred in the year 1839, on British soil. All that was wanting of the inquisition were the instruments of physical torture; and yet no indignant press, and no outraged people, lifted up their voices against this oppression. These facts have been published in England, and have never been denied. The words wrung from the victim by the inquisitors, and the papers seized in his house, were used against him, though happily with no effect on the trial. Even the casuistry of Blackwood offers no excuse for this outrage; although acknowledging the fact, it mildly speaks of the proceeding as *"unusual."*

The motives of the inquisitors for pursuing this desperate course is obvious. The conspirators had not completed their plans for the accusation; they looked for some acknowledgment, some contradiction or confusion, which might serve their purpose. But most signally did they fail. The answers were all consistent. Nothing having the trace of a suspicion was found among the papers. Who cannot see already in the boldness with which the accused submitted to this fearful ordeal, in the absence of any contradiction or inconsistency in his answers to questions insidiously prepared to entrap him, and in the want of the slightest evidence of fraud among papers and correspondence accumulated through twenty years, during which he had been collecting and preparing proofs of his descent, convincing proof of his innocence?

But we must hasten to the trial, the approaches to which are overshadowed by suspicions, if not proofs, of such foul wrong.

Six documents—translations of which will be found in the appendix—alleged to have been produced by Lord Stirling as evidence in his civil suit, were charged as forgeries, and declared to have been uttered by him knowing them to be forged. The most important of these documents, which if genuine, contained conclusive proof as to his right, and the one upon which the attacks of his adversaries were principally directed, was a map published in 1703 by the celebrated geographer Guillaume de L'Isle, of the Academy of Sciences. On the back of this map are several original documents, dated in 1706, 1707, 1712, authenticated by attestations written and signed by Flechier, Bishop of Nismes, and by Fenelon, Archbishop of Cambray. Now, as these documents furnished important proof of the descent of the accused from the first Earl of Stirling, and established the existence, tenor, and limitations of the missing charter, it was of the highest importance to brand them as suppositious.

But taken as a whole or in detail, having regard both to the execution and tenor of these documents, there was no blemish, error, or intrinsic evidence of falsification. Not only was there a perfect harmony of the different parts, and a perfect imitation of various writings, but there was displayed so vast a knowledge of facts, of places, of real names in Scotland, Ireland, and America; such an acquaintance with the genealogy of many great families; so vast an erudition extending from the literary history of France to the style of the stonecutter; such knowledge of geography, heraldry, and even the barbarous Latin of chancery writings, that it was a miracle surpassing all that the art of the forger had ever attained to, for one or many falsifiers to have achieved the work. Viewed as authentic, the execution of the work was natural; viewed as false, it was hardly less than miraculous.

What must have added more to the embarrassment of those who wished to assail these documents was, that the authenticity of the writing and signature of Fenelon, which formed one of the documents, was attested at Paris, in 1837, by M. Daunou, the keeper general of the archives of the kingdom, a member of the Institute, and one of the most renowned scholars of Europe. The authenticity of the signature and writing of Flechier, Bishop of Nismes, and of Louis XV, and other writings on the map, was attested in 1837 by M. Villenave, one of the Presidents of the Historical Institute, and possessing the largest collection of autographs in France.

What ground, then, had the officers of State on which to rest their

attack? It was this, and this alone. The map of Canada was published in 1703. On the incriminated copy we read "par Guillaume de L'Isle, premier géographe du Roi," (by Guillaume de L'Isle, first geographer of the King.) But the title was not conferred on the author by patent until 1718. The writings of Fenelon and Flechier, which are on the map, bear the date of 1707, before Guillaume de L'Isle had obtained his patent, and could take by virtue of that patent the title of first geographer of the King. Flechier had died in 1710, and Fenelon in 1715; therefore, say the Scotch lawyers with much apparent force, the writings purporting to be those of Flechier and Fenelon must have been forged. We have endeavored to state with perfect fairness the grand charge against the genuineness of the documents. Without this apparent contradiction in the date of the patent of De L'Isle, and the date of the deaths of Flechier and Fenelon, no one would have dared to impeach the documents.

The only testimony impeaching the map in other respects was that given by two French witnesses, M. Teulet, one of the secretaries of the archives of the kingdom of France, and M. Jacobs, geographical engraver, attached to the Institute of France. M. Jacobs, in reply to a question from the Crown counsel, (we adopt the Crown report,) says: "In my conscientious belief, I feel convinced that all the writings on the back of the map are false; and this I infer, not merely from an examination of the writings, but from the presence of the title, First Geographer of the King, which proves that this copy could not exist till after 1718, and in consequence, the individuals whose names these letters bear, could not write in 1706 and 1707, and on which no writings could have been written by the Archbishop of Cambray."

He also observes that *two* of the letters, one signed Philip Mallet, and another signed John Alexander, seemed to have been written in ink composed of China ink of yellow and of red. He observes under certain words a reddish tint which springs out, and which seems to show that these documents might "have been written with the ink composed of China ink, yellow and red; such ink is generally composed to imitate ancient writings, and in the use of which, it often happens that the reddish tint springs up when the ink is dried." He also observes that the map is spotted in different places with a reddish color, and that the mixture made use of in writing the map was splashed upon it.

M. Jacobs, the French engraver, also testifies that the ink on the

above named document is not such ink as is generally used. "It is not ink which has turned old. I think it must be composed to imitate ink which, when turning old, assumes a brownish tint, and that the ink used here is for the purpose of imitation." All elicited from this witness, as to the genuineness of the writings, is as follows:

"*Q.*—In forming a judgment from ink, and the appearance you have spoken to, should you say that these are genuine writings of the date they bear, or false writings?

"*A.*—I should think them false.

"*Q.*—Judging from the ink alone and the appearance of these writings, putting all other evidence aside, would you pronounce that the documents are true or false?

"*A.*—There would be a great presumption that they are all false; but that is all."

Only two Scotch experts, Mr. Lizars and Mr. Smith, were examined. Mr. Lizars stated that there was "a great resemblance between the ink in the writing signed Ph. Mallet and the letter signed John Alexander," the two referred to by the two French experts, that it was "like common water-paint."

Mr. Smith, who was employed to make fac-similes of the map, stated that both the letters of Mallet* and Alexander were shaded. "They resemble each other a good deal in color, but they are not exactly the same. There is a reddish line through them both."

We have given here *all* the reasons and evidence urged to support the spuriousness of the multifarious writings.

It must be borne in mind that only two witnesses on the trial expressed an opinion against the genuineness of the writings; and these opinions, it will be seen, rested *wholly upon the apparent contradiction in the dates, the color of the ink, and the red shading under the letters on two only of the documents impeached.*

We shall now fully explain the contradictions of the dates, and destroy the grand objection, the "astounding fact," as Blackwood calls it, upon which the accusation rested. We will establish by the very witnesses called for the Crown the genuineness of the documents. We will show by testimony judicially taken, but suppressed through the unfaithfulness or timidity of Lord Stirling's counsel, that all the

*Mallet's note is written on the map itself, and is not a letter, as stated in report.

suspicious marks upon the documents were collusively placed there to give to them the appearance of forgeries. And, finally, we shall prove that this map of Canada, containing on its back the various writings impeached, and declared to have been fabricated at Paris, in 1837, existed with the same autographic documents more than thirty years before that date, and twenty years before Lord Stirling asserted his claims in Scotland.

We shall not only refer to the evidence produced at the trial, but to documents and evidence, fully verified, obtained since the trial, and to testimony taken before the trial, and suppressed through the influence of the Crown. To understand the nature and value of the latter evidence, which has never before been published, and which throws such a flood of light upon this mysterious trial, it will be necessary for the reader to be informed as to the nature of a preliminary judicial examination, unknown in our law, and called a *precognition*. "This," says Bell, "is an examination by the judge ordinary, or justices of the peace, where any crime has been committed, in order that the facts connected with the offence may be ascertained, and full and perfect information given to the public prosecutor, to enable him to prepare the libel and carry on the prosecution." In this investigation the witnesses are not usually put on oath, and they must be examined separately. Nor is the *accused* or *any person* in his behalf admitted to be present when the precognition is taken. The testimony written down by the magistrate is also called a precognition. We have before us copies of the precognitions, from which we shall quote, on stamped paper, duly certified.

Proceeding to analyze all this evidence, we shall show:

1st. *All the documents written on the back of the map of Canada were believed to be genuine by the artists in Edinburgh who expressed any opinion upon them.*

William Home Lizars, a celebrated engraver at Edinburgh, after having examined the writings with great care, declares, "I thought them genuine."

"I have already said that I did not think them other than genuine. They appeared to be in a natural hand." (Examination during trial.)

Samuel Leith, lithographer, Edinburgh, head partner of the firm of Leith and Smith, who had been employed by the officers of the Crown to make a fac-simile from the map and documents, declares, "Gene-

rally the writings on the map are free and unconstrained; and there is nothing in the writings, as they appear to have been *originally* executed, to induce an opinion that they are forgeries." And he begins by pointing out as *genuine* the principal document, which gives an analysis of the charter of Novo damus of 1639, an analysis made in 1706, and signed Ph. Mallet. (Precognition signed Samuel Leith.)

We have before us a certificate signed by H. Maxwell Inglis that the copies of precognitions, from which we quote, were read over to the witnesses, and signed by them since the trial; so that they retain their opinions despite the verdict of the jury.

2d. *The writings on the map are in different hands.*

This is an important fact to be established, because Lord Stirling was accused of being the only falsifier, or at least to have had no accomplice but a woman—Mademoiselle Le Normand—from whose hands he received it.

Archibald Bell, lithographer and engraver, Edinburgh, though in the interest of the Crown, declared "that these autographs on the map of Canada appeared to be written by separate hands; that by great study any one person might by possibility have written the whole; but this is not likely." Precognition not signed after trial.

John Johnston, engraver and printer, equally interested in sparing the Crown lawyers, declares "that he does not think that any one individual could have written all the autographs on the map, and that Lord Stirling could not have done so."

3d. *The writings on the map bear no resemblance to the writing of Lord Stirling or that of Mademoiselle Le Normand.*

Three Scotch experts make this declaration on the trial and when precognosed.

William H. Lizars interrogated during the trial:

Q.—For what purpose were they (the documents on the map) shown to you?

A.—To compare them with Lord Stirling's handwriting and that of Mademoiselle Le Normand, and see if I could trace any similarity between their handwritings and the handwriting of the documents.

Q.—Did they appear to be in either of the handwritings with which you compared them?

A.—The papers were shown to me by the Procurator-Fiscal,

and the result of my opinion was, that the handwritings were not the same, that they bore no resemblance to each other.

Archibald Bell in his precognition declares, that he examined the writings on the back of the map, and compared them with Lord Stirling's writing, and could see no resemblance between them and his lordship's writing.

John Johnston makes the same declaration.

4th. *The writing of Flechier, Bishop of Nismes, one of the documents on the map, is proved to be authentic.*

The establishment of the authenticity of a single writing on the map, referring to other writings, establishes the genuineness of all.

John Johnson says, in his precognition, "the Bishop of Nismes's autograph appears to be all freely written, and not to be in any way painted," (referring to coloring on two of the documents.)

This testimony supports that of two other experts, William Home Lizars and Samuel Leith, who declare that they believe "all the writings genuine;" and is confirmed by that of Archibald Bell, that the autographs appeared to be written by different hands.

This opinion of the four Edinburgh experts is fully confirmed by the evidence of an important French witness.

The Baron Charles Herald de Pages, attached to the historical department of the Royal Library in Paris, "charged with the duty of examining manuscripts," being interrogated if he believed the autograph of Flechier genuine, "I am certain of it." * * * "This writing perfectly corresponds with that of a hundred letters of that Bishop, which are in the possession of my uncle, the Marquis of Valfont."

The Crown reports assume to give the examination of the witnesses' question and answer in *totidem verbis*. But in the report now before us this important testimony, so material for the prisoner, which alone was sufficient to confound the charge of fabricating the documents of the map, is given in brackets, as follows: ("Being shown the map libelled on, the witness thought the writing thereon attributed to Flechier was conformable to the specimens he had brought with him.")

An important circumstance deserves to be noticed. This witness produced a great number of undoubted and unsuspected specimens of Flechier's handwriting. With such means of comparison the forgery of a document of over a hundred words could have been completely exposed. The production of the genuine handwritings of Flechier by

this witness gave the Crown the means, and the only one, of establishing their charge. But not a word of suspicion as to the writing of Flechier was uttered at the trial by the Crown witnesses, lawyers, or judges.

The witness, Baron de Pages, was asked by one of the judges, (Lord Moncrief,) "If you were assured that the map shown you did not exist till 1718, would you still say that the writing was Flechier's?"

A.—"Wherever it might be placed, I should say it resembled the other specimens of the handwritings of Flechier, which I have under my eyes."

"Let me remind you," said the Judge, "that Flechier died in 1710, and this paper had no existence till 1715."

A.—"It would not be the less like."

This witness, it may be remarked, testified that he had not known of Lord Stirling's case until ten days before he left Paris; in fact, he was a total stranger to Lord Stirling and his family.

The handwriting of Flechier had received the attestation of M. Villenave, as follows:

"Cette attestation est de la main de Esprit Flechier, Eveque de Nismes.

"PARIS, *Aout* 2, 1837. VILLENAVE."

Thus was the handwriting of Flechier, upon a document which referred to the charter, and to the note of Mallet, *suspected of being painted*, established to be authentic by the testimony of four Scotch and two distinguished French experts; while with all the means at hand for exposing the spuriousness of the document, if it had been forged, not a shadow of suspicion was thrown upon it at the trial. The following is the attestation in question, (translated:)

"I have lately read in the house of M. Sartre, at Caveirac, the copy of the charter of the Earl of Stirling. I remarked in it many curious particulars, mixed up with a great number of uninteresting details. I therefore think that we ought to feel the greatest obligation to M. Mallet for having enabled the French public to judge, by the above note, of the extent and importance of the grants made to this Scotch nobleman. I find also that he has extracted the most essential clauses of the charter, and, in translating them into French, has given a very

correct version of them. M. Caron St. Estienne has requested me to bear testimony to this. I do so with the greatest pleasure.

(Signed) "ESPRIT, *Bishop of Nismes.*

"At Nismes, this 3d of June, 1707."

5th. *The handwriting of* FENELON *is proved to be authentic.*

An attestation to the genuineness of this writing, made by the Keeper-General of the Archives of France, M. Daunou, a member of the Institute of France—a man who had been a member of almost every legislature of France since the revolution, and whose reputation as a scholar is European—ought to have been received as conclusive. Nevertheless the Edinburgh jury did not appear to understand the value of this attestation, although it was confirmed by the Scotch witnesses, who declared that all the writings were genuine.

It is said that the attestations of the distinguished men, Daunou and Villenave, although no doubt was expressed as to their attestations, were not received as evidence because they were living, and could have been produced. Good care had been taken, by refusing the commission to verify the papers in France, and bringing on the trial in Edinburgh, where men of their age and position could not attend, to deprive the accused of such testimony as would have established the case. Still this testimony, though excluded by technical rules of law, none the less exists, and is more conclusive as to the genuineness of the French documents than the verdicts of a hundred Scotch juries.

6th. *The handwriting of Louis XV is genuine.*

M. Villenave had already certified the authenticity of the four lines attributed to this monarch. The Scotch witnesses, who believed all the writings were genuine, gave to this attestation a force which Baron De Pages still further increased. Being interrogated as to the writing attributed to Louis XV, he answered, "It is exactly like the specimens of his writing which I have brought with me." This witness then produced notes written by Louis XV, which he had brought from collections in Paris. The Crown officers thus had the means of demonstrating beyond a question the spuriousness of this writing by comparison with undoubted originals; but, as in the case of Flechier, no attempt was made to expose the forgery by this means. With proof so conclusive of the genuineness of three writings on the map, which, in fact, established the genuineness of the whole, we are utterly at a

loss to comprehend the verdict of the jury which declared the writings forgeries.

The jugglery by which this was accomplished can only be explained by supposing that the jury must have been confounded by the menacing attitude and pressure of the presiding Judge, who neglected no opportunity to drop his poisonous insinuations against the prisoner's cause. An instance occurred in the course of the examination of De Pages. Addressing this witness, Lord Meadowbank says, "Do you know that Voltaire says Louis XV never wrote but two words in his life, 'bon' and 'Louis?' " "Do you recollect Voltaire saying that when he communicated with his mistresses he employed a secretary to write his billets?" The witness was not sufficiently self-possessed to reply, as the fact is, that nothing like this is to be found in Voltaire's writings! This is admitted in the Crown report.

7th. *All the writings on the map are of the epoch of their different dates.*

It was attempted on the trial to make much of the color of some of the words and letters. Upon this the French witness, Jacobs, rested his unfavorable opinion. The Crown officers pretended to see in this color traces of a brush and a palpable proof of falsification and alteration.

Mr. Lizars, one of the Crown witnesses, questioned by a juryman: "Would age not have brought those two documents, the one signed Mallet, and the other signed Alexander, to the same color?" (Red color.)

A.—"I imagine it would. I know that writings of that date are almost all of that color."

John Johnston says, in his precognition: "He considers, from the form of the letters in these autographs, that they were written of the date they bear, and not of a more recent date."

Archibald Bell declares, "They (the documents impeached) don't appear to be written of a recent date, but of the date they bear." The same witness declares, "that the length of time would give the documents a cloudy appearance;" and "he could from their appearance have pointed out those which were of an ancient date from those of a recent date, (the modern attestations,) although he had not been told the date of either.

8th. "*The writings on the map have been painted over since they left Lord Stirling's possession, for the purpose of giving* THEM THE APPEARANCE OF, AND HAVING THEM DECLARED, FORGERIES."

Let it not be forgotten that the *only* suspicious circumstances about the writings pretended to be discovered, independent of the apparent contradiction in the dates, are the color of the ink, the red shading of the letters on two of the writings, and the splashing of coloring matter on the map. Taking this into view, the testimony which we shall now give is of the utmost importance.

Samuel Leith, lithographer, in his precognition formally declares:

"Map. Mallet's note. His opinion is this note is genuine, but thinks that some person has gone over the letters in it with a brush and coloring matter of a pink and brownish tint. This is evident from the coloring matter being spotted over the surface of the map, apart from the writing. His opinion is that this has been done *to give it the appearance of a forged document*. This could not be done by a forger, as he would not leave so many indications of the material he had been using scattered about. If it had been done by him accidentally, he would have tried some means to have got these effaced. Moreover, some of the lines are not gone over in this manner with the coloring matter, which corroborates his opinion, that some one must have gone over the writing with a coloring matter, and left these lines intentionally, to give it the appearance of an ill executed forgery." He stated this to the Crown counsel, and was asked by them who he thought could have done this; and he said, "he was certain from the manner in which it had been done, that it must have been done by the enemies of Lord Stirling."

Letter of John Alexander. The same remarks apply to this letter, but not in such a strong degree.

"Note of Bishop of Nismes. There has been also tampering with this note, by the letters having been gone over here and there with a darker ink, and that this has been done some time after the original writing. If a person had been wishing to forge this document, there was no occasion for him to have gone over it in this way, which was the very means to make it appear a forgery.

"Generally the writings on the map are free and unconstrained; and there is nothing in the writings, as they appear to have originally existed, to induce an opinion that they are forgeries. Acting on this opinion, he caused the lithographic copies of them to be made fac-similes of the writing in its natural state, without the tampering and vitiation above referred to."

Now, in view of this grave charge, it is important to consider in

whose hands this map had been placed since it was first exhibited by Lord Stirling; and what opportunities this important witness had for forming the opinion given in his precognition. Ever since November 27, 1837, the day on which Lord Stirling's agent, Mr. Lockhart, though instructed merely to show the document and demand a commission to get it more fully proved in France, had allowed it to be seized by the court, it had remained in the custody of the clerk of the court. When the officers of State, seeing that, if acknowledged to be genuine, nothing remained but to recognise Lord Stirling's rights, had determined to make out the writings to be forgeries, the map was taken out of court and ordered to be lithographed. What object could there have been to *make fac similes* of, or to lithograph, an instrument which, if false, would show itself so on its face, except to secure by this means the opportunity for tampering with the document which the accusers had so vital an interest in destroying? John Smith was charged with the delicate and important task of making the fac similes. Six months were occupied, or pretended to be occupied, in this work. To remove all appearance of suspicion, the court directed that the work should be done in the house of Mr. Mark Napier, a respectable advocate, who was directed to perform the impossible duty of being always present with the lithographer. The work was in the lithographer's hands some months before Mr. Leith made his precognition. Mr. Leith had every opportunity for inspecting it. He was head partner of the firm of Leith & Smith, as appears by Smith's testimony on the trial. His statement was no matter of opinion. He had seen and examined the map in its original state, when it was free from all suspicious marks, and he knew that it had been falsified and tampered with. The charge so boldly and uncompromisingly made by Mr. Leith in his precognition, that the documents had been tampered with by "the enemies of Lord Stirling, to give them the appearance of forgeries," was a charge against Smith, as well as the agents of the Crown; for in their hands alone had the documents been placed, and the point of Leith's accusation was that they had been injured in Smith's hands. This charge, so disgraceful to the Crown agents, was well known in Edinburgh. Hence the questions put Smith on the trial by Mr. Innes, Crown counsel: "You were employed to make a fac simile from that map?"

A.—"Yes."

"Did you do anything to injure the appearance, or texture, or color of the paper?"

A.—"No."

Why were these questions asked, unless as an attempt at a weak response to the public report, that the map had been altered and tampered with.

With so grave an accusation resting against the Crown agents, an accusation which they well knew, why did not the counsel save the honor of the Crown by confronting Leith and Smith in the witness box? Why did not the prosecuting officers prove the falsehood of this accusation, which had excited so much public indignation, by calling Mr. Mark Napier, at whose house Smith worked? Was it not because they dared not enter into this investigation? Was it not because Mr. Mark Napier had said that he "no longer recognised the writings?"

It is a significant fact, that Smith, the *lithographer,* immediately after the trial was appointed Crown printer; a place worth £2,500 a year, and never before conceded to a lithographer. The public indignation, expressed by the papers of the time, showed that the motive for this appointment was fully understood.

But the most deplorable and suspicious circumstance connected with the whole trial is the almost inconceivable fact that Samuel Leith, who was in attendance in court, and whose name we find enrolled among the defender's witnesses, *was not called by the defender's counsel.* The testimony of the witness, who would have exposed the nefarious conspiracy, who would have turned the charge of fabrication from the accused to the accusers, was withheld to *"save the honor of the Crown, compromised by its agents."* This was Lord Stirling's counsel's only excuse for his conduct. It was reiterated by Lord Meadowbank, in extenuation of his course, and repeated again in London as a reason for the deplorable excesses the Government had tolerated!

But this was not the only case of the suppression of testimony for the defender. Archibald Bell, John Johnston, John Skirving, all scientific witnesses, who would have established the genuineness of the documents and map, all of whom were in attendance, were not called. Indeed, of *twenty-one* witnesses for the defence, *six* only were examined. What can be hoped for in the best of causes when the interests of State demand a condemnation; when the accused, deprived of the ordinary defences enjoyed by a common felon, has only his innocence and right to shield him from the violence of power?

A convincing proof that the charges of Leith are true is the fact, that the officers of State and the court dare not allow the map to see the light. When the civil suit in which the map with its documents was filed was closed, Lord Stirling was entitled to reclaim his documentary proof. He still desired to establish by further and cumulative evidence the authenticity of his documents. He has applied for them in vain. The court, with that usurpation of power which they have again and again displayed in these proceedings, specially decreed "the productions in this process to remain in the hands of the clerk, and not to be borrowed by, or returned to, the defender till further order."

9th. "*The map was of the date which it bears*, 1703. *This is not contradicted by the interpolation of the words*, "*Premier Géographe du Roi.*"

The point made out by the prosecution was, that De L'Isle did not receive this title till 1718. The map bearing this title could not have existed till 1718. As Fenelon and Flechier died before that time, the documents on the map, purporting to be written by them, must have been forgeries. Herein lay the whole foundation of the impeachment of the writings upon the map. It is plain that the French witnesses based the opinions which they expressed at the trial wholly on this apparent inconsistency. To explain this, we will present some facts not brought out on the trial.

Guillaume de L'Isle commenced his chief publications in 1700, and continued them to 1726. It was common at that time, as at present, under monarchies, for individuals to assume or obtain special titles, such as "Géographe ordinaire" to the King, "Maitre d'Hotel ordinaire," "Medecin ordinaire." Under Louis XIV, there was a "Premier Aumonier," "Premier Maitre d'Hotel," "Premier Gentilhomme," "Premier Medecin," "Premier Peintre," and soon after "Premier Géographe du Roi."

De L'Isle first called himself simply "Géographe." He so soon eclipsed all rivals, that he was named in 1702 "Member of the Academy of Sciences." A little later, he gave lessons in geography to the young Prince, afterwards Louis XV; and on the 26th of August, 1718, received a patent, conferring upon him a pension of 1200 livres, *with* the title of "Premier Géographe," which had not hitherto been conferred in so formal a manner.

There is conclusive proof that the title of "Premier Géographe du Roi," was borne by him at an earlier date than 1718.

At the library of St. Génevieve, in Paris, is a rare work, entitled "Memorials of the King's Commissioners, &c., upon the possessions and respective rights of the two Crowns in America, &c., published at Paris in 1755." On page 62, vol. 1, of this work, occurs the following passage on the subject of four French maps, presented against the pretensions of England to establish the ancient limits of Acadia.

"The two first are those of M. de L'Isle; the one a map of North America, published in 1700, and the other, a map of Canada or new France, published in 1703."

Farther on, at page 64, is the following:

"It appears that the first of the said maps of Sieur de L'Isle, is one which was particularly corrected by himself, and that it was based upon the observations of the Royal Academy, of which he was one of the members *at the publication of the latter*, AS WELL AS "PREMIER GEOGRAPHE DU ROI," (dont il etait un des membres à la publication de sa dernière, ainsi que "Premier Géographe du Roi.") These extracts are certified by the administrator of the library of St. Génevieve.

Who, then, can doubt that De L'Isle, who in 1702 "had eclipsed all rivals," and who in 1703 was a member of the Academy of Sciences, who, at that time, was always consulted by the old King, and was employed as geographer at court, who was afterwards the instructor of the young Prince in geography, as may be seen by an historical memoir by Freret, was in fact authorized to call himself First Geographer of the King? This is not contradicted, but rather confirmed, by the patent of 1718. It is carefully kept out of view by Blackwood, as it was at the trial, that this patent was given *to grant him a pension of* 1200 *livres*, and for this reason the title which he long enjoyed was more formally conferred.

We have before us an original letter of M. Villenave, in which he says: "There are extant in France, in England, and most probably in the libraries of Edinburgh, maps of Guillaume de L'Isle, of a date anterior to 1718, and upon which Guillaume de L'Isle takes this double title, "De l'Académie des Sciences et Premier Géographe du Roi." I have in my cabinet a very considerable number of these maps. Those of Canada, 1703; of Paraguay and Chili, 1703; of Peru, Brazil, and the country of the Amazons, 1703; India and China, 1705; Tartary, 1706; Barbary, Nigritia, and Guinea, 1707. Well, upon *all* these maps anterior to 1718, are these words engraved, "Par Guil-

laume de L'Isle, de l'Académie des Sciences, Premier Géographe du Roi."

There are some of the maps of the date of 1703 without this title, and others with it. It is probable that De L'Isle placed the additional title which he was allowed to assume upon maps struck off, or printed after maps of the same date had been issued. Every artist and publisher knows that changes and insertions are frequently made on maps while the original date is preserved. The old plates would be used again, or as an Edinburgh witness offered to do, the engraving could have been made upon the map itself. The theory of the French witnesses, and of the Crown lawyers, that a map, which they say was not published till 1718, could bear the date of 1703, is absurd. Mr. Leith, the lithographer, shows the absurdity of that theory in his precognition. "His opinion is, that the map was thrown off in 1703. He says it would be perfect folly, and he could not believe that the publisher of the map would throw it off in 1718, with the addition of 1703 on it. Every publisher is anxious to have the most recent date possible on his works, and would not throw off impressions with a date fifteen years preceding on them. This remark applies more especially to maps, and to the map in question, being of a country where geographical discoveries, in all probability, would have been made in the space of fifteen years."

There is no doubt that the line Premier Géographe, &c., was interpolated, probably by De L'Isle himself, after he had assumed the title which he took upon himself in 1703. The incriminated map of Canada has one peculiarity which has not been observed on other maps of Canada of the same date. The engraving or heading of the map is beautifully painted or illuminated, which is only observed on ancient maps in royal keeping, or of which particular care is taken. Upon such a map especially would De L'Isle have placed the highest title which he had a right to assume, to give the map the greater authority.

The theory that the map was not in existence till 1718 is proved absurd by the French witness Jacobs. He acknowledges that many maps of De L'Isle have interpolations, like the one on the map in question; but, says he, "this interpolation only takes place on those maps, the date of which is anterior to 1718. In the maps published subsequently to 1718, there is no interpolation. The words first geographer of the King are always regular with the other part of the title." Does not this prove that, whenever there are interpolations,

they must have been made prior to 1718? Would the engraver have taken the trouble to interpolate awkwardly a title on the map, when at the same time he had a plate containing the words first geographer, &c., engraved regularly with the other parts of the title?

The mismanagement of the defence was equally displayed in this as in other parts of the trial. The charge of falsification had no support but in the assertion that it was *impossible* to have the four words, Premier Géographe du Roi, interpolated otherwise than by the original copper plate of the map. If this were possible, any possessor of the map could have procured the interpolation on the map itself before or after 1718. We, for ourselves, believe that the interpolation was made by De L'Isle himself on the original copper, on a fresh series struck off by him soon after assuming the title, by which he became known in 1703. But if this point could have been proved, the position of the Crown would have been untenable. It certainly should have been urged by the defence.

John Skirving, punch-cutter and engraver, at his precognition produced "a plate and three copies of a modern map of Turkey and Asia, in the titles of two of which he has inserted the last line from the aforesaid plate, as will be seen by a comparison of these two maps, in which the insertion is made with the remaining one. In like manner, he is of opinion that it was quite possible for Guillaume De L'Isle to have made the insertion of Premier Géographe du Roi in any of his maps after the impression had been thrown off, without throwing off an entire impression of the map. And if he had had a number of his maps of 1703, or any other date *actually thrown off*, it would have been a saving of expense to him to have put the addition of this title *on them* in this manner, or he might have put it on any single map if he had been requested, or had occasion to do so. The insertion could also have been made in another and a very simple form, and which, he thinks, no French artist or engraver could be ignorant of, especially an extensive publisher of maps, such as De L'Isle, and that is by means of an operation of tissue, which he can explain if necessary.

(Signed) JOHN SKIRVING."

This witness, though in attendance, was not called!

John Johnston, Crown witness, who had expressed an opinion in his precognition that the words were inserted on the paper itself without the aid of plate, was not called!

No one of the Scotch witnesses was examined upon this important point which formed the basis of the accusation.

Jacobs, the French engraver, thought it could be done, but doubted if any method was known at the period of the map. *Yet there are whole maps of the time traced so as to look like engravings;* and all the geographers consulted in Paris by Lord Stirling, state the operation to be both frequent and easy, and to their knowledge of ancient date.

Our readers, who have followed us thus far, must have seen how signally the officers of the Crown failed to prove the fabrication of the documents impeached; and they must also have seen how completely the prosecution would have been overwhelmed, if the counsel for the defence had done their duty. But it was from no want of zeal or industry, or from any niggardliness in the expenditure of money, that Crown agents failed to make out a better case. As we shall have no farther occasion to discuss the testimony given in this part of the case, we will pause for a moment to consider the character of the witnesses produced by the Crown. Here we shall depart somewhat from the rule to which we have thus far rigorously adhered, of stating nothing for which we had not full documentary proof. But the statements we shall now make have been published in England, and have never been denied.

When Messrs. Innes and Mackenzie, the Crown agents, who had proceeded to Paris to get up their case, "found it impossible to corrupt Messrs. Daunou and Villenave," (Mr. Villenave's own words now before us,) and were at a loss how to proceed, they placed their desperate case in the hands of a man more notorious in the annals of police and crime than any other in Europe, the infamous Vidocq. He made up for them the amalgamation of scientific and ignorant witnesses; the two first, Teulet and Jacobs; the three latter, a cobbler, a hawker, and a street prostitute, who, under the care of a French policeman, figured for some weeks in Edinburgh.

The "eminent" M. Teulet, as Blackwood calls him, was picked out of the archives of which Daunou was chief. His testimony, weakened beforehand by the counter attestation of his chief, was completely neutralized by that of the Baron de Pages, who held an official position in the Royal Library, which gave to his opinion an authority at least equal to that of M. Teulet. Both the French witnesses for the Crown threw themselves at once on the dubious quibble of the officers of State, that the writings could not have been placed on the map

until after August, 1718; when that falls to the ground, their testimony falls with it.

Teulet, we are assured, felt that he had compromised his position by lending himself so freely to the Crown agents, and in a letter, addressed from Edinburgh to his brother, stated his surprise at finding that Lord Stirling, who had been represented to him in the blackest colors, was a most honorable man; and he further expressed doubts and misgivings as to his own position in the affair.

Of the other French witnesses, the cobbler, the hawker, and the prostitute, little need be said. They were all under the surveillance of the French police for crimes committed by them, and were accompanied to Edinburgh by a police officer, who had strict orders never to lose sight of them. The hawker was picked out of the street, set up in a handsome shop as a seller of gentlemen's hats and caps, until the trial was over, when he returned to his old trade of selling books, prints, &c., under the wall of an hotel on the Quai Voltaire. He was to swear that he sold a map or maps of De L'Isle to some one in 1837. In his precognition he insisted that it was in 1827 that he sold it. He wanted further drilling. When asked at the trial if Lord Stirling was the man, he answered "No," and described quite a different person.

The cobbler and the girl were to swear to seeing Lord Stirling come every night to Mad'elle Lenormand's house in the rue de Tournon. The cobbler swore with a vengeance, for he declared he had seen Lord Stirling at the house referred to almost every night from May to November, 1837. This he repeated and insisted on. As it happened, in fact, Lord Stirling left Paris early in August, was present and voted at the election of Scotch peers on the 25th of that month, and continued to reside in Edinburgh until after the trial.

The girl was not called, because, having since her arrival followed her vocation by committing a robbery in the house where she lodged, the Crown counsel thought it prudent to withdraw her. The Crown agents *compounded the felony*, and got her off. And as they feared that some proceedings might be commenced against the whole of their witnesses, they were all summarily ordered away before the trial actually terminated.

Lord Stirling brought over his landlord, Mr. Benner, an English professor, who kept an establishment for education, to prove that Lord Stirling was never out but once in an evening, and then to take tea with some friends in the neighborhood. And that so far from going to

the rue de Tournon to aid in forging a paper, he was rarely ever absent long enough from the house to admit of his going to that distant quarter of the city. We have the precognition and affidavit of Mr. Benner which establish all these facts. But with their usual tenderness for the Crown cause, Lord Stirling's counsel refused to call this witness.

These disreputable witnesses were furnished by Vidocq, and paid—as was drawn out on the trial—1,000 franks a month, besides all their expenses, (the cobbler had worked the year before for 200 franks a year,) were dressed up for the occasion, paraded about the town, taken to the theatre, *invited by ladies of the Crown lawyers to tea parties*, all the time accompanied by the police agent.

10th. *The incriminated map and writings bear intrinsic evidence of authenticity.*

Every bank teller, writing master, or lithographer, in short, any expert in writing—and to such men we appeal—knows that it is almost impossible to forge a single signature, which of course is copied, so perfectly that it cannot be detected. When the forgery extends even to the simple copying of a long writing, the difficulty of fabrication is vastly increased. Extend the forgery to a dozen *copies* of different writings, and we believe that any expert will say, that it is impossible to make a fabrication which cannot be instantly detected. There are seventeen different writings, containing eighteen hundred and seventy-three words. But the remarkable fact is, these documents are not *copies*. They are originals, written in various places in France and England. If this is a forgery, it is not a forgery of imitation, which we assert would be impossible; it is a forgery of creation. Now, not a fault can be found with the contents or arrangement of these documents. The most trifling error has not been detected in a long series of facts in a multitude of dates, in the names of persons and places belonging to France, Scotland, Ireland, and North America. Such a forgery demanded a man possessed of an imagination capable of inventing historical documents, writing them in Latin, English, and French, and seizing at the same time the variations of three languages during the lapse of a century. It required a man learned in archæology, in heraldry, in geography, in literary history, and at the same time possessing a caligraphic skill such as has never been conceived of. In short, the forger must have been a man of universal knowledge. And yet if we are to believe the verdict of the Edinburgh jury, it is

easier to believe such a miracle, than to suppose there has been a mistake as to the date of placing the words, "first geographer of the King," on the map.

But we prefer to give the views of M. Villenave upon this point. We give an extract from a letter addressed by him to Lord Stirling, to whom he was an entire stranger, dated from Paris, April 19, 1839.

"My Lord: If the letter you did me the honor of writing to me on the 27th February, has hitherto remained unanswered, it is because I am even now hardly recovered after a long and cruel malady, which placed my life in danger.

"It was not without the deepest astonishment that I learned the sad catastrophe by which it was desired to bring your law suit to a conclusion.

"You are accused of having fabricated, or caused to be fabricated, all the writings which cover the back of a map of Canada. Permit me, my Lord, to say, that if they thus attack your honor, they ascribe to your intelligence an immense and gigantic extent; for, whoever will attentively examine all the vast composition of the pretended forgery, the divers contextures of the characters, the perfect conformity of the writing of Fenelon, Flechier, and Louis XV, with other autograph documents of those three personages; if they will also examine the historical part, the ensemble, and all the details, they must be convinced that the art of the forger cannot extend so far. All the science of the '*Antiquary*' of Walter Scott would not have sufficed for so wonderful a work; and I doubt whether the 'Savans' of the Edinburgh society, so justly renowned in the literary world, would, if they were consulted, affirm that they would be capable of imagining and arranging such a composition; for, it is more easy to scale the Heavens, or to penetrate into the depths of the philosophical sciences, than to give to a great ensemble of falsehoods, and of supposed facts, an air of truth.

"I was asked to certify the authenticity of the writing of Flechier, and of the three or four lines of Louis XV; I compared them, and could not hesitate to give my attestation. The illustrious Monsieur Daunou, member of the institute, keeper of the archives of the kingdom, has likewise certified the authenticity of the writing of Fenelon. Now, it would result from the verification of the artists of Scotland, that the keeper of the archives and I must have been deceived, and that the writings, certified by us as authentic, must have been forged by you, my Lord, assisted by a lady, and by an illiterate young man, whom you must have set to the work.

"It may be said that this decision is audacious, and even burlesque."

* * * * * * * *

"Well, now, what can be proved by the depositions of a servant girl and a porter, to make out that it was you, my Lord, who fabricated, with your fellow-laborers, a woman and an unlettered young man, a work, the very conception and execution of which would have embarrassed a whole academy?

"And of what use can be other subaltern witnesses, without value and without authority, on the foundation even of the question? For example, what imports it whence came the map thus covered with documents? Since what period has it been held necessary, under a penalty of being a forger, to prove the origin of a writing or document that is produced, the forgery of which cannot be proved?"

* * * * * * * *

"It is contended that the pretended forgers of the map have betrayed themselves by too much precaution. I cannot see that; I should, indeed, see the contrary if I admitted the falsification, for would it not have been great unskilfulness to make Mr. Alexander write to the Marchioness de Lambert, 'I have so little idea at present that the titles and estates of the Stirling family can devolve upon my children, that I have encouraged the taste of my son for the ministry of our church of Scotland, and he is preparing himself in Holland, at the University of Leyden.' Assuredly this passage alone would suffice to confound the accusation.

"Your lawsuit, my Lord, will have its place, and be re-echoed in the pages of history.

"Even if I did not believe in your loyalty and honor, it would be impossible for me to believe in the vast genius which would attribute to you, if it were well founded, the fabrication of the map of Canada.

"The accusation must necessarily fall, if it be examined from the origin and as a whole. All the minor details ought to be overlooked in the grandeur of this cause.

"Be pleased to accept, my Lord, with the expression of my wishes that of my most distinguished consideration.

(Signed) "VILLENAVE,

"*Ex-Professor of the Literary History of France at the Royal Athenæum, one of the Presidents of the Historical Institute, &c., &c.*

Paris, *April* 19, 1839."

The reader will judge of the weight to be given to Mr. Villenave's letter by the following letter from Professor C. C. Jewett, the accomplished Librarian of the Smithsonian Institution, addressed to Lord Stirling's counsel:

"SMITHSONIAN INSTITUTION, *August* 29, 1853.

"JOHN L. HAYES, ESQ.,

"DEAR SIR: I have this morning received your letter, making inquiry respecting the literary standing of Mr. Villenave, late President of the 'Institut Historique,' and the value of his opinion relative to the genuineness of ancient French autographs:

"I cannot perhaps do better than refer you, in reply, to the following works of standard bibliographical authority, namely, 'La France Littéraire, par M. J. M. Quérard,' art., Villenave, (Mathieu Guillaume Thérèse,) tome 10, pp. 183—188; and the 'Manuel de l'Amateur d'Autographes, par P. Jul. Fontaine,'' pp. 343—350.

"M. Quérard gives a biographical notice of M. Villenave, assigning him a high rank as a literary man. He was the founder and editor of several influential journals, in the charge of one of which (Le Courrier) he was associated with M. Guizot. He was one of the editors of the 'Biographie Universelle,' to which he contributed not less than three hundred articles. In connexion with M. Depping he edited the 'Collection des Prosateurs Français.' He furnished most of the biographical articles in the 'Encyclopédie des Gens du Monde.' He wrote a translation of Ovid's Metamorphoses,' which was published, with the original text, in an elegant edition, in 4 volumes, 4to, by Didot, 1807–1822. He also wrote a translation in prose of the first eight books of the Æneid of Virgil, which was published, (with a translation of the last four books by M. Aman, and the Latin text) in 1832, in 3 vols., 8vo.

"The list of the publications of M. Villenave occupies eight columns of the work of Quérard. They consist of poems, academical discourses, political pamphlets, and works mostly in the departments of literary history, bibliography, and biography. M. Villenave was General Secretary of the Celtic Society, and of the Royal Society of Antiquaries, President of the Philotechnic Society, Vice President of the Society of Christian Morals, and President of the Second Class of the Historical Institute. His reputation is that of a learned, laborious, and conscientious scholar, and of an amiable and modest man. He possessed a valuable library, rich in literary history, and in works

relating to the first French revolution. He was a most indefatigable, intelligent, and successful collector of autographs. M. Fontaine makes frequent mention of him in the work above named, and devotes a greater space to his collection than to that of any other individual. He calls it a 'véritable musée autographique,' a 'vaste' collection. He seems to regard it as the most important private collection in France.

"I suppose that there is no man in France whose judgment on matters relating to the genuineness of autographic writings, particularly those of French sovereigns and '*savans*,' is entitled to be received with greater confidence than that of M. Villenave.

"Very respectfully, your obedient servant,

(Signed) "C. C. JEWETT."

11. *The incriminated map was known and described long before the period when Lord Stirling's accusers pretend it first received the writings which cover its back.*

One of the arguments adduced against the authenticity of the documents was that the counsel for the defence could not show who had been the last possessor of the map so richly clothed with autographs, nor determine precisely its origin, or how it came into the hands of the person who enabled the Earl of Stirling to produce it in the Civil court. It cannot be doubted that if the Earl could there have shown that it had been for a long time in the possession of some respectable person, from whose deed-chest it had been drawn and transmitted to him, no suspicion could have rested upon the document. But is it reasonable to declare a document, bearing upon its face all the characters of authenticity, a fabrication or forgery, because all the proof of former custody is wanting? Such a doctrine would compel us to reject the greater number of historical facts, which are received without doubt as to their truth. Such a doctrine would compel us to reject even the gospel itself; for who can point out its *material* origin in the Christian world; how, where, and at what precise time it was written? The material proof is certainly wanting of the origin of the books of the Bible. But no man could have fabricated the divine volume. We make the comparison reverently. No forger could have fabricated the documents on the map of De L'Isle. But, although the veil which covers the details of a historical fact be not fully raised, the fact does not the less remain established.

Lord Stirling being compelled by the passionate resistance of his

enemies to add new light to the light of evidence, discovered that an English gentleman of the name of Rowland Otto Bayer, prisoner of war in France during the Empire, had died at Verdun in 1805; and that in a *bordereau* or list of papers found at his lodgings, and delivered to M. Gorneau, bearer of a power of attorney from Mr. Christie, of English descent, and the friend of the deceased, was written what follows. We translate from the French:

No. 1. Letter of M. Orsel, de Paris, dated 2d January, 1803.

No. 2. Copy of a letter to M. Billard, of 28th June, 1804.

No. 3. Map of Canada, or New France, by *Guillaume De L'Isle.*

On the back of this map are several documents, viz: an epitaph in English, an original letter of J. Alexander, with a marginal note by *Fenelon;* a note by the traveller *Mallet;* some attestations, &c.

No. 4. A map of the world, colored. And below this list we read:

"For us as a legal act, certified literal, and conformable to the original. The officer, Secretary of the Fortress of Verdun.

(Signed) "PARMENTIER."

"VERDUN, 6th May, 1807.

"No. 420. Seen by me, artist verifier of writings.

(Signed) "H. MARTIN.

"Seal of the Minister of War."

"Seen by the chief of the recruiting office and military justice.

(Signed) PETITET."

"By order of the Minister Secretary of State for War, the Counsellor of State, director-general of the control of centralization and audit certified by me, the signature of M. Parmentier attached on the other side in the quality of secretary of the fortress of Verdun.

(Signed) "MARTINEAU.

"PARIS, 22d December, 1838."

This document, supported as it is by other circumstances which we shall detail, proves beyond question that the map with its documents described in the "*bordereau*" of the Englishman, Rowland Otto Bayer, who died a prisoner of war at Verdun, 1805, is absolutely the same which figured at the criminal trial in Edinburgh. This being proved, the map could not, in spite of the testimony of the cobbler, hawker, &c., have been fabricated at Paris in 1836 and 1837, to meet the exigencies of Lord Stirling's case. We have the copy of the inventory

describing this map, certified on May 6, 1807, by Parmentier, the secretary of the fortress of Verdun. We have the attestation of the Counsellor of State and Minister of War, M. Martineau, that the signature of Parmentier is genuine; and that he made this signature on the 6th of May, 1807, in the quality of secretary of the fortress of Verdun.

With this proof, of what account are the testimony of the Scotch and French witnesses, or the judgment of the Edinburgh jury?

This important document was authenticated at Paris by the Minister of War on the 22d December, 1838, a little over four months before the close of the trial at Edinburgh. The counsel for the defence advised Lord Stirling that before producing this document, if not necessary, it would at least be desirable to add other proofs to the attestation of the Minister of War. Lord Stirling, knowing well all the difficulties which would be raised in his case, allowed himself to be persuaded that if he could supply the proof which was wanting of the presence of the name of Rowland Otto Bayer upon the lists of the prisoners of war, the document signed Parmentier, and recognised by the Minister of War as authentic, would have authority so great as to resist every objection. He knew that the prosecution did not scruple to call every writing produced by him a forgery. He feared that they even might dare to attack a document certified by a French Counsellor of State, as they had suspected one attested by the Keeper General of the Archives of the Kingdom.

Most unfortunately the Verdun document, authenticated in Paris, was sent back to France some time before the commencement of the trial, and when it was returned to Edinburgh, the judgment in the forgery trial had been pronounced. When Lord Stirling was restored to freedom, he ordered new searches to be made in Verdun and Paris, which were prolonged until the month of June, 1841.

On the 4th of February of that year, an acquaintance of the Earl of Stirling, Mr. William Benner, wrote to the Minister of War to inquire whether, in the archives of his administration, a detailed inventory of the effects which had belonged to *Rowland Otto Bayer* could be found, and applied for a copy of it. The following was the answer:

"The Minister Secretary of War informs Mr. William Benner, in reply to his inquiries, having for object to obtain a copy of the inventory believed to have been drawn up at Verdun of the effects belonging to Mr. Rowland Otto Baijer, who died in 1805, in that town, being

then a prisoner of war, that there has not been found in the archives of the Ministry, either any inventory (besides the bordereau) or extract from the register of deaths applicable to Mr. Rowland Otto Bayer, and that the name is not inscribed on the list of prisoners in said town."

This indeed seems a fatal answer. But let us not prejudge too hastily, for the Minister of War immediately adds:

"But it results from a letter dated from Verdun, on the 30th Messidor, without indication of the year, by a *Mr. Rowland Otto Bayer*, written for the purpose of obtaining permission to see his daughter, then eighteen years old, and a boarder in the house of the Ladies Green, living on the rampart Cauchoise, at Rouen, that when he was residing at Paris, in the house of Madame Piement, rue de la Loi, hotel du Cercle, *he* had been in consequence of a decree of the government made a prisoner of war, and obliged first to proceed to Fontainbleau, and afterwards to Verdun.

"For the minister, and by his order, the Councillor of State, general secretary.

(Signed) "MARTINEAU."

The fact that Bayer's name is not inscribed upon the lists of prisoners of war was known to Lord Stirling before the trial. For this reason he was induced to defer the production of the *bordereau*, as he knew that the absence of Bayer's name from the lists of prisoners would be objected against the document. It was only on the 4th of February, 1841, nearly two years after the trial, that this matter was cleared up, and proof obtained that Bayer was in fact a prisoner of war at Verdun, although his name was not on the lists.

It was only on the 22d of May, 1841, that the mayor of Verdun, M. Tapinier, wrote to another acquaintance of Lord Stirling, that the seals had been put on the effects of Mr. Rowland Otto Baijer after his death, the 30th Floreal, year XIII, (20th of May, 1805,) and that a procès verbal of the removal of the seal followed on the 7th Praireal, (27th May.)

Lord Stirling was advised to make inquiries respecting any English detenus who might be still living in France, and who might furnish further information relative to Mr. Bayer. His London solicitor, while making inquiries at Brighton, ascertained that the hotel d'Angleterre, at Dieppe, was kept by an old man named Willoughby Taylor,

who had been a prisoner at Verdun. A letter of inquiry was addressed to Mr. Taylor, and the following reply received. We have now the original before us, with the post-marks and stamps, which attest its authenticity, as also those of Lord Stirling's solicitors.

HOTEL D'ANGLETERRE, DIEPPE, *March* 25, 1842.

"SIR: I beg to acknowledge the receipt of your letter, and in reply to inform you that I knew Mr. Rowland Otto Bayer very well. I kept an hotel at Verdun, and Mr. R. O. B. frequented my house. I was likewise in the habit of supplying him with different articles at his house; he generally settled his account every week. On one occasion that I called upon him for that purpose, I perfectly recollect seeing a very old map, with some writings on the back of it. It was partly folded up. I am not aware of what country it was, not having taken particular notice of it. This is all the information I can give you; I think I should recollect the map again if I were to see it.

"I am, sir, your obedient servant,

(Signed) "WILLOUGHBY TAYLOR."

Unfortunately there was no means of taking Mr. Taylor's testimony to be available in British courts without commencing certain proceedings in chancery, the expenses of which, as the London solicitors say in their letters, would amount to some hundred pounds. While the expediency of taking this course was under deliberation, Mr. Taylor died.

Mr. Eugene Alexander, a son of Lord Stirling, in the mean time, had visited Mr. Taylor, and exhibited to him a fac simile of the map, which he immediately recognised, particularly from the copy of the inscription of John Alexander, as being one he had seen in possession of Mr. Bayer. The statement of Mr. Alexander, written down at the time, we refrain for obvious reasons from giving; and add a copy of a letter, authenticated by post-marks, stamps, &c., received by Mr. E. Alexander while residing in London, from Mrs. Taylor, after the death of her husband.

"HOTEL D'ANGLETERRE, DIEPPE, *July* 7, 1847.

"SIR: In reply to your inquiries I beg to say, that my late husband, Mr. Willoughby Taylor, used frequently to talk about the ancient map covered with writings on the back, which he had seen during his detention at Verdun, in the possession of Mr. Otto Bayer, who died there

in 1805; and when you passed through our town in May, 1842, on your way to Paris, and showed him the *fac simile* copy of the writings, he at once recognised it as the exact copy of those on the map he had remarked in Mr. Otto Bayer's lodgings. I hope this information may prove of use to you; it is all I can state on the subject.

"I am, sir, your obedient servant,

(Signed) "ANN TAYLOR."

The results of these searches and correspondence may be summed up as follows:

1. The Englishman, Rowland Otto Bayer, was a prisoner of war at Verdun in the year 1805.

2. He died there at that period.

3. The bordereau drawn up by the secretary of the fortress of Verdun the 6th May, 1807, proves that the copy of the map of Canada, which Lord Stirling was accused of forging at Paris in 1836-'7, was in 1805, thirty years before, in possession of Rowland Otto Bayer.

5. These facts, established by complete documentary proof, are confirmed by the statements of Mr. Willoughby Taylor.

With this convincing proof of former custody of the map and documents, the last pretence of forgery vanishes, and with it the whole fabric of surmisings and inventions with which it was so flimsily interlaced.

The question will be asked: How came the map into the possession of M'elle Lenormand?

The mystery which rests upon the former custody of this map cannot be fully explained, nor is it necessary that it should be explained to establish the genuineness of the map and documents, the only point in question.

M'elle Lenormand, who was by no means a mere fortune-teller as represented at the trial, but a woman of distinguished literary attainments, and of unsullied private character, who had been consulted by Napoleon, the Emperor Alexander, and most of the great personages in Europe, (see her life and memoirs published since her death by M. Cellier du Fayel, professor of law and moral philosophy,) had undertaken to aid Lord Stirling in researches for documents in France. There was every reason for believing that some of the more ancient documents or records referring to the Stirling family might be discovered in France; as the French had taken possession of the old fort at

Port Royal, built by Sir Wm. Alexander, and occupied by his son, and after the surrender of Nova Scotia to England by the French, all the Acadian documents had been carried to France. The extraordinary facilities possessed by the remarkable woman who figures in this transaction, for communicating with people of all classes in Paris, naturally suggested her as one, among many employed on the same work, who might aid Lord Stirling in his researches.

M'elle Lenormand had been warmly attached to the Bourbons. She was among the few Royalists who had escaped the massacres of the reign of terror. It is well known that among those who also escaped was Josephine, wife of the Marquis de Beauharnois, afterwards Empress of France, who, from sympathy in their early misfortunes, always preserved a warm friendship for M'elle Lenormand. This remarkable woman afterwards repaid the favor received from Josephine, by writing the best memoir extant of the unfortunate Empress. Among others of the Royalists who escaped—and in this circle of the old aristocracy M'elle Lenormand was admitted on the most familiar terms—was the Princess de B****, one of the old noblesse, who had been much indebted to M'elle Lenormand for kindness during the terrible trials of the revolution. At her house one evening, previous to 1837, M'elle met Prince Talleyrand. At this interview, the subject of Lord Stirling's claims, which had already attracted great interest in French society, was the subject of conversation. Shortly after this interview, the map came into M'elle Lenormand's possession. Of all these circumstances there are no other proofs, than that lady's repeated declaration, and we desire our readers to make the just distinction between this part of our narrative, in which we undertake to give only the rumors in French society, and the views and declarations of Lord Stirling and his friends, and the statements supported by authentic proofs which we have before made.

When the map was shown to Lord Stirling by M'elle Lenormand, he told her that he could accept of no such document from her hands, unless he had distinct proofs of its former custody. She then admitted, and afterwards made a deposition under oath to that effect, that the document was sent to her through the agency of Prince Talleyrand. M'elle Lenormand always manifested a great eagerness to have a commission in France to verify the document, or to have its authenticity established before a tribunal in France, according to the advice of the Dean of the French advocates. The illegal course of the Scotch

courts, in refusing a commission to France, prevented Lord Stirling from obtaining the proofs of former ownership, and M'elle Lenormand, being seventy-six years old, could not undertake a journey to Edinburgh to testify at the trial.

Some facts must be borne in mind which will throw light on the history of this document previous to 1839. This map of Canada was beautifully painted around the title, as maps are which are in royal keeping. Again, it contains among other writings a note of Louis XV. It is therefore probable, that this map was preserved at the royal residence of Versailles. At the sacking of the Palace, it without doubt came into other hands, with a multitude of other relics and documents, which were afterwards sold as curiosities. Thus it came into the hands of Mr. R. O. Bayer, and at his death was probably bought for the Government, and deposited in the American archives in Paris.

Now, it is a remarkable circumstance, that about the very time of the discovery of this map in Lenormand's hands in 1837, a document was stolen or removed from these very archives. This fact was afterwards communicated to Lord Stirling by Baron de Pages, and other gentlemen, with a recommendation to use every means to verify the identity. It is needless to say that no means were left untried. The best influence—both English and French—was brought to bear, not only upon the officers attached to the archives, but also upon the Ministers and the late King. But the office had been closed to all research, and the most absolute refusals were given in every instance, even though a demand was made to verify that the map of Canada was *not* the document so lost. The only reason assigned by several distinguished persons in France for the refusal to interfere in the matter was, that the King's Government had been extremely annoyed by remonstrances made to it by the British Government, which had accused it of extending aid and giving up documents to Lord Stirling, with a view to disturb the peaceful relations existing between Great Britain and her Canadian colonies. And it has been believed by many that the charge of forgery was got up merely to afford a pretext for searching in Lord Stirling's house for some proof of a *treasonable* character, showing an understanding between him and French authorities. Much sympathy was expressed for Lord Stirling and his family, accompanied by polite, but firm, refusals to take any part in the object desired, for the reasons above given.

These demands for verification were renewed at every change of

men and Government ineffectually. Our talented fellow-countryman, Major Poore, who was employed by the Massachusetts Historical Society to make searches in Paris, was equally unsuccessful in his efforts to obtain access to these archives. He is well acquainted with the fact of Lord Stirling's failure, and can attest to the truth of the statements relative to his own efforts.

Whatever may be the deficiencies of proof as to the former custody of this document, they are wholly immaterial as proofs of its genuineness. This document, clothed with autographs of the most distinguished men of France, is not like an ordinary deed. It is to be regarded as a work of art, completely covered with indications of its authenticity, or proofs of its falsity. It is like hundreds of old pictures by the great masters, which have passed through suspicious hands, which are authenticated by no proofs of former custody, but are regarded as of priceless value solely on account of the inherent evidences which they present of their genuineness.

Lord Stirling was accused of forging an excerpt or abridged copy o the charter of Novo damus of 1639. Two days of the trial were occupied in discussions and presenting evidence in relation to the excerpt. The object of the Crown counsel in incriminating the excerpt was to convey the impression to the jury that Lord Stirling had founded all his claims upon the charter of 1639, and that the excerpt accused was the only evidence presented of the evidence of that charter. The Crown counsel undertook to show, as Blackwood has since done, that if this excerpt is proved to be insufficient evidence of the existence of the charter of 1639 that all Lord Stirling's claims fell to the ground. It was even asserted that the services of the juries, who had given their verdicts as to the heirship, were founded on this excerpt.

Now, what are the facts? This excerpt was never presented to the jury at any one of the services. It was not used or presented by Lord Stirling as proof in the civil suit brought by the Crown to reduce the services. It is not placed on the list of proofs, although Lord Stirling's counsel always considered it a genuine and authentic document. He had himself withdrawn it. He was himself perfectly aware of all the apparent defects in the documents which the Crown counsel pretend to have discovered by a rare sagacity; and for these reasons he had instructed his counsel not to rely upon a document which was subjected to a breath of suspicion. It is true he had every reason for believing the document genuine, and proof since obtained has fully

established it. He had received it from his agent, Mr. Banks, who, in a letter of 17th March, 1829, had given him a detailed account of "the fortunate discovery" he had just "made in Ireland of the abridged copy or excerpt of the charter of Novo damus of 1639."

The many learned counsel who had examined the document had not a doubt as to its genuineness. Mr. Lockhart, Lord Stirling's most respectable solicitor or agent, says "that no suspicion ever crossed his mind as to the genuineness of the document;" and he continued in this belief to the last. Lord Stirling, soon after receiving the excerpt from Mr. Banks, in 1829, "threw himself upon the tender mercies" of the principal prosecuting officer for Scotland, and exhibited the excerpt to Sir William Rae, the Lord Advocate, who had been directed by the Ministers to consider a petition of Lord Stirling relative to the lands of Nova Scotia and Canada. Mr. Corrie, a most respectable solicitor of Birmingham, says: "Nothing escaped from the Lord Advocate from which he could infer that he suspected the document, but the reverse. Mr. Maundell, of Great George street, attended each day before the Lord Advocate. I do not recollect or believe that he ever expressed a suspicion on the subject of any of the documents. The Lord Advocate said that he saw no reason to doubt that the petitioner was Earl of Stirling, and had a right to that title; that he had no doubt about the charter, but he would not advise his Majesty to grant a new patent or charter, because Lord Stirling had a legal remedy in Scotland, referring, I believe, to a process for proof per tenorem."

Believing, as Lord Stirling did, that this excerpt was a genuine document, which more recent investigations have fully proved, he presented the excerpt in an action for proving the tenor, the purpose of which was to obtain a new charter upon proving the tenor or substance, and loss of the ancient charter. In that action, brought in 1829, he failed; but not on account of any doubts thrown upon the genuineness of the excerpt, but for the simple reason, stated by the Judges, that the excerpt did not appear to be a copy of a perfected charter, but of a privy seal precept for a charter.

From that moment he refused to enrol among his proofs a document which had any incompleteness or defects which could not be explained. It was only through the carelessness of Lord Stirling's agents that a document, which he had not thought of for nine years, remained among the files of the court.

If this document had been a forgery, why would the fabricator have

allowed this proof of guilt, which he no longer relied on as evidence of his claims, to remain in the hands of his enemies? If it had been suspected to be a forgery, why was it allowed to remain unaccused for nine years by the agents of the Crown, who would have eagerly availed themselves of any means of crushing so formidable an opponent?

But it served the purpose of the Crown to connect this excerpt with the French documents, and to assert that upon these Lord Stirling based all his claims.

If the excerpt was believed to be a forgery, why did not the Crown prosecute the only party who could have committed it? The evidence of Mr. Lockhart and the letters offered in evidence proved that Lord Stirling had received this document from Mr. Banks, in Ireland. The forgery, if it had been committed, had been done by Banks, and not Lord Stirling. These letters the Crown counsel would not allow to be read. Banks had become their tool, and had aided them in hunting up the objections to the excerpt upon which they rested their case. The prosecution of the real fabricator, if fabrication there was, would not have served their purpose.

We repeat it, granting the excerpt to have been fabricated, it proves nothing against Lord Stirliag. It does not weaken in the slightest respect his claims. The correspondence with Banks proves that Lord Stirling was innocent of any fabrication. The jury found this by their verdict. It had never been used or relied on at the services as evidence, and the verdict of the jury which impeached it declared, no more than had been already acknowledged, that it was not admissible as evidence without further attestation.

Still we have no doubts as to the genuineness of the documents, and the attacks made at the trial caused an investigation which completely satisfied Lord Stirling and his friends as to its authenticity.

There is a broad distinction between the genuineness or authenticity of a document, and the sufficiency of that document as evidence. It is in the latter respect alone that the attacks made upon this document have any force.

We have proved, as we must think conclusively, the genuineness of the French documents, and we claim the benefit of the rule given by Lord Meadowbank to the jury: "If you are satisfied that the proof is clear that any of these sets of documents are forged, but that the evidence with respect to the others is not so conclusive, you will have to

make up your minds whether, considering that the whole are so connected with and bear upon each other, there can be any good reason for fixing a character upon one which must not also belong to the other." No one believing the genuineness of Mallet's note, even without the other evidence, can doubt that the charter of Novo damus, of 1639 existed, or can conceive it improbable that a copy or excerpt of such a charter should have been made by the solicitor of the Stirling family in Ireland.

To understand the circumstances under which this copy was probably made, it will be necessary for the reader to know certain facts, which are fully established by documentary evidence. During the troubles in Scotland the Dowager Countess of Stirling resided in Ireland with her daughter, the Countess of Mount Alexander, formerly Viscountess Montgomerie. Afterwards the Countess of Mount Alexander left the original charter of Novo damus, received from her mother, with a Mr. Conyers, from whose hands it came into the custody of his son Mr. T. Conyers, a master in Chancery, and solicitor of the family of Montgomerie. It appears that, after the death of the fifth Earl, Mr. Conyers delivered the original charter of Novo damus to the sixth Earl de jure, Rev. John Alexander, of Dublin. A box containing this charter, with many other family parchments, was stolen in England from the widow of the sixth Earl de jure, as there is every reason to believe, by a servant of Mr. William Trumbull, a collateral descendant of the fifth Earl. When Mr. Trumbull made arrangements with Gen. Alexander to unite with him in prosecuting the claim to the Stirling estates, this box, containing the charter, seen by Horace Walpole, and many other papers, was delivered to Gen. Alexander. We have not space at this time to present the documentary history by which these facts are established, for we have made this brief digression simply for the purpose of explaining the connexion of Mr. Conyers with the excerpt.

The excerpt, consisting of over two thousand words, is written wholly in Latin. It is acknowledged to correspond in every particular with the Chancery Latin of the ancient charters; not a single error of phraseology was detected by the acute lawyers who examined it. Since the writing of Latin has almost wholly gone out of use, it is utterly inconceivable that any modern forger could have composed and fabricated a law document in a dead language, which would not have exposed to a nice criticism its falsity and recent origin in a hundred

particulars. And yet all that Blackwood can find is the objection that the term "consanguineus noster" is applied to Peers, and never to a Commoner; while the alleged charter twice applied that title to Alexander, the son of the Peer, consequently "a Commoner, and not the Earl himself!" an objection both absurd and false. The term might naturally be applied to the son of a Peer, styled as Lord Alexander. But the title of cousin *was* applied in the excerpt to the Earl himself, as follows: "We give, &c., &c. to our right trusty and well-beloved *cousin* and councillor William, Earl of Stirling," &c., ("per cons.o et predilecto nostro *consanguineo* et consiliario, Willielmo, Comiti de Stirling.")

How rotten a cause must that be, which is reduced to quibbles and falsehoods like this.

The excerpt had evidently been copied by Mr. Conyers or his clerk into a book or register, and the leaves afterwards cut out, (but there is nothing to show that they had recently been cut out,) folded up, endorsed, and placed away with other Stirling papers. There were red lines about the margin which favor that supposition. This was used as an argument against the antiquity of the document, and is a fair specimen of the reasoning and proof on the trial. A witness swore that red lines were not introduced into *Scotland* till 1780, or at least had not come under his notice till that time.

The writing was in an old hand, different from the Chancery hand in which charters in Scotland are written. A witness precognosed, but not called, for the defence, who had been employed for years in a solicitor's office in London, was shown the excerpt, and states that it was on precisely the same kind of English court hand as old English deeds, and, being in Latin, resembled them entirely. Eminent lawyers from Dublin were brought at a great expense to Edinburgh, who had with them ancient registers and documents, and would have proved that all the old law writings in Ireland of that date were in this style and hand. They would also have proved that the marginal reference, "Reg. Mag. Sig.," which a witness swore was not introduced into Scotland till 1780, was the ancient, and certainly the most natural, mode of making such a reference to charters of the Great Seal in Ireland. These witnesses would have proved the genuineness of the initials and flourish of Thomas Conyers. They also would have proved the authenticity of an ancient affidavit, libelled on by the Crown, signed by Henry Hovenden, and sworn to before one of the Barons of the Exchequer of Ireland, showing that the existence of

the original charter of Novo damus, in the hands of Thomas Conyers, and the genuineness of a certificate of Thomas Conyers to the same effect. These witnesses had been brought from Ireland by General D'Aguilar at an expense of nearly £500. Owing to the lateness of their arrival in Edinburgh, the Crown counsel were not aware of the extent and importance of their testimony, and therefore these precognitions were not taken; but when they were introduced, and took their places in the witness-box, with the ancient registers and writings in their hands, and the court was made acquainted with the points they were about to substantiate, the Judges, who were so vigilantly guarding the Crown's interest, seeing that the proof would be fatal to the infamous scheme of the Crown lawyers, were alarmed; *and, after retiring for secret consultation*, ruled, amidst the murmurs of indignation of the vast crowd assembled, *that the witnesses should not be heard!*

Three witnesses, holding Crown offices, expressed the opinion that the document was not ancient. This testimony is completely neutralized by the practical assertion of the genuineness of the document by the lawyers, Lord Advocate, and Judges, who, nine years before, having it under the closest examination, had no doubt as to its genuineness. One chemist made experiments on the paper, which proved it, he thought, to be recent. Another chemist, employed by the Crown, made experiments, which proved the paper to be old. This was a specimen of the uncertainty and vagueness of the testimony. The Judge, Meadowbank, thought it a proof of the falsity of the document that the charter granted a part of New England, which the Judge said the Scotch Crown had no power to grant. Yet the undoubted charter of Canada, registered in Scotland, contains a grant of lands of New England and New York.

Still there are two defects or inconsistencies in the excerpt, which, although furnishing no evidence of fabrication, are not at first easy to explain.

These difficulties, or inconsistencies, are, that at the end of the excerpt are the words *gratis per signetum;* which words are found only on a Privy Seal precept, and not on a complete charter; while the excerpt has the testing clause, which ought not to be on a Privy Seal precept. The second inconsistency is that the testing part, having the names of the witnesses, but not their signatures, has the name of John, Archbishop of St. Andrews, Chancellor of the Kingdom of Scotland,

and nine others, with the date of the 7th of December, 1639; while, in fact, the Archbishop of St. Andrews ceased to be Chancellor on the 13th of November, 1639, and died on the 26th of November, 1639.

We present the explanation of these inconsistencies, given by the lawyers in Scotland, who have still entire confidence in the genuineness of the excerpt.

It is believed that Mr. Conyers, who was in 1723 the possessor of the *original* charter of 7th December, 1639, and was a lawyer and master of Chancery, was also the man of business or steward of the noble family of Montgomerie. Hence it is inferred that he and his father had been for many years the depositaries of many other papers of the Montgomerie and Stirling families. The endorsement, with the initials and flourish on the outside leaf of the excerpt, seem clearly to prove that the document was written by one of the clerks of Mr. Conyers for *his own use*. The form of the excerpt is of that class of documents called *mandates* or *precepts*, and the words *per signetum* are applicable to a mandate under the Privy Seal. The clause descriptive of the witnesses most certainly ought not to have been inserted. On this account it would appear that the excerpt was prepared, not from an *original perfect charter*, but from a *first draft* of an intended charter, written for the Earl's approbation, (as was usual when such royal grants were conceded by the Sovereign,) long before the great seal was affixed to the completed charter. This, precedents it is said will show, might have been done fifteen or sixteen months before the 7th December, 1639. At the moment of drawing such a draft, the Archbishop of St. Andrews was still probably Chancellor of Scotland, and the insertion of his name then as one of the *proposed* witnesses could not have been an extraordinary or irregular proceeding. Now, after having given up the original charter to the sixth Earl, when he succeeded to the honors, it is thought that Mr. Conyers had had the expert made for his own *private reference* from the *first draft* remaining in the Montgomerie charter chest, and not from the *original* charter. This theory, which presents nothing improbable, enables us satisfactorily to account for the few errors in the excerpt, otherwise so unimpeachable. The addition of the *real date* of the perfect charter upon an excerpt taken from a first draft, which could not have borne any date, is accounted for by supposing that Mr. Conyers, of his own will, caused the date to be added in order to bear it in his remembrance.

It was argued, that if there had been any charter of Novo damus, it would have been recorded in the different stages through which it went to completion in the records of four different departments. To this, it is said, that the Earl of Stirling, long Secretary and Keeper of the Seals, and who issued his own mandate, possessing in consequence of his exalted station extraordinary powers, could have caused the original signature, under the King's sign manual, to be carried *per saltum* to the Director of Chancery as a sufficient authority for preparing and sealing the charter. In such a case, the records would not show the usual successive steps for the completion of the charter. It is admitted that twelve leaves in the 57th volume of the records of that period are missing. The loss of these leaves and the defects of registration are more naturally accounted for by the disturbances of the times. We shall adopt the language of the very able writer in the Democratic Review, who has discussed the question of Lord Stirling's rights with great ability.

"Clarendon gives an elaborate picture of these distempered times, which should be consulted by all who ask the reason why formalities of registration have not been attended to by the Crown's grantees at Edinburgh in 1639–40. The truth is, that they could not transact any business whatever there but by proxy, for to have presented themselves would have been to hazard, if not to forfeit, their lives. And if the Earl of Stirling obtained by stealth the registration of his patent of *Novo damus*, in the 57th volume of the Records, as we believe he did, the state of feeling there against every friend and counsellor of Charles was such that fully accounts for its being torn from its place by anybody, amidst the applause of the whole community. The wonder is, not that it is gone with the twelve missing leaves, and that the indexes made up long after say nothing of it, but it had been a greater wonder had it been allowed to remain. In fact, when we look back at that day, when universal indignation possessed the people against the Court, we would be as much astonished to find the charter in question on the register, as to have found that granted to the town of Edinburgh torn out. The existence of the one and the non-existence of the other are only equivalent proofs of the state of the public mind. It had not been possible for a royal grant of British North America, made part of the very county of Edinburgh for the express purpose of vesting the title in a courtier, to exist on the record. It was sure to be destroyed there at any rate, by some person or other."

To this it may be added, the charter may not have been a Scotch charter at all, and no registration may have been attempted in Scotland where political prejudices were so strong against the favorite courtier of the unpopular King.

Other charters, purely American, and *only recorded in America*, for instance, that of Sr. Ferdinando George, were granted to several distinguished men, who, at their own risk and charges, undertook to colonize different portions of the western continent. The charter of Novo damus, referring particularly to estates in America, may have been recorded only at Port Royal or Annapolis. Thus all the grand objections founded on the want of registration would be overthrown.

We have already dwelt too long upon the question of the genuineness of the excerpt, which the jury declared was not forged by Lord Stirling, or uttered by him knowing it to be forged, and which, whether authentic or not, is wholly unnecessary to support his rights, and hasten to a consideration of the De Porquet packet, which contains evidence in English perfectly conclusive as to Lord Stirling's descent. Little need here be said. These documents were attacked with the same reckless and indiscriminating ferocity as the other papers by both the Crown counsel, and court. See how Lord Meadowbank pressed this point in his charge to the jury. "It is a matter for your consideration to say whether there are any grounds for your doubting that the English documents are forged also." But these documents were English. The jury could read and understand them. No longer compelled to trust to French experts and Scotch lawyers, and to pass on papers in a language which they could not comprehend, they vindicated their sturdy common sense as soon as they could see and judge for themselves. They found the English documents in the De Porquet packet genuine—a judgment most mortifying to the Crown, for still Lord Stirling was left with his best defences assoiled of suspicion.

We may remark here that it is no part of our present object to prove the pedigree of the Earl of Stirling. A paper as long as the present would be required to present and discuss the vast mass of evidence by which the pedigree is established. Although we may avail ourselves of another occasion to present this interesting evidence, we consider the question of pedigree settled by the services of the juries, and by the opinions so distinctly expressed by Lord Brougham and other ex-Chancellors in the House of Lords, in 1845, that the Scotch courts had no right to reduce the services. We confidently rely upon a final

and triumphant decision upon this point in the House of Lords as soon as the means for prosecuting the appeal are provided.

We do not deem it necessary to reply to the foul aspersions upon Lord Stirling's character contained in the articles of Blackwood and the arguments of the prosecuting officers and presiding judge.

No other answer need be given to these exaggerations and inventions than the testimony given at the trial by Lord Stirling's friends. We give from the Crown report the testimony of two only of the witnesses, without comment, simply premising that, strong as it is, it has been *toned down* by the officers of State, who revised the report before its publication, and have suffered no reference to be made to the enthusiastic reception of this evidence by the audience.

Mr. Harding, cousin of late Sir Robert Peel, said of Lord Stirling, "He is a man of excellent moral principle and honor. As a father, as a husband, and as a friend, his character is one of the very best. At school, he was loved by every one. When I knew him again, I had occasion to know a great deal of him, from the time of his first calling upon me. In his letters, there is not an observation that would not do honor to any one, as far as the heart is concerned. There is no man in existence more honorable than he is."

Col. D'Aguilar, (now Lieutenant-General and Governor of Portsmouth,) said:

"I am at the head of the adjutant-general's staff in Ireland. My first commission was dated in 1790, about forty years ago; I was at school with him (Lord Stirling) near Birmingham, at the Rev. Mr. Corrie's, brother of Mr. Josiah Corrie."

"Did you visit his family?"

"Yes, often. I may state the circumstance. I was at that time at a considerable distance from my friends. Lord Stirling's family resided in the immediate neighborhood. We were class-fellows. His place was generally immediately above me; he also showed kindness to me; and it brought us more or less together. When he went home at the short vacation, he invariably took me with him; so that I had the opportunity of living in habits of great intimacy with him; not only with himself, but with his family. The character of his family was in the highest degree respectable. I may be a little prejudiced, for I received such affectionate kindness and hospitality from the family that I can never forget it. Their affection for me was unbounded, and I am here to repay the debt of gratitude which I owed to them; I

was separated from him by circumstances. I corresponded with him and his family; when I was in London, (1830, and subsequently,) I saw a great deal of him, and was frequently at his house, and he in mine; his children corresponded with my children. There was no event of his life, more particularly that connected with the claim and title, that he did not confide to me. As to his character as a man of honor, as a good parent, and a good husband, I think my presence here is the best answer to that question. Nothing on earth could have induced me to take the part I have taken, to stand before the court where I do, (beside his friend,) if I did not think Lord Stirling to be incapable of a dishonorable action. I beg to say, that if the correspondence of an individual is any index to his mind and character, that I have in my possession the most ample proofs to enable me to form my opinion of him."

The crown report omits to state that General D'Aguilar in giving this testimony from the dock, where with a sublime and chivalric devotion he had taken his place by the side of his friend, was frequently interrupted by the shouts of applause of the vast audience, who sympathized so deeply with the prisoner.

The conduct of the prosecuting officers throughout this trial was characterized by a determination, and even ferocity, which was due not merely to official zeal, but to deep personal interest in the result. The leading Crown counsel was Ivory, the solicitor-general. This advocate had had the management of the civil suit against Lord Stirling ever since 1833. He was made solicitor-general for the express purpose of conducting the case in the criminal court, and appeared in his official gown for the first time at this trial. He was assisted by Mr. Innes and Roderic McKenzie. The latter had been crown agent in this case since 1833. The sum of £40,000 had been pledged to Ivory and McKenzie by private parties in possession of the English and Scotch estates, on the condition that Lord Stirling should be broken down. In 1837, Messrs. Ivory and McKenzie made repeated overtures to Lord Stirling's agent, Mr. Lockhart, to compromise the case, and complained bitterly of Lord Stirling's obstinacy in refusing to negotiate. They desired that the negotiations should be carried on through them, that they might secure their reward. Lord Stirling refused to treat with any parties except the ministers. Of course all the influence of the Crown officers was brought to bear upon the ministers o prevent a settlement of the case by them, which at that time, 1837,

after the suppression of the Canadian rebellion, the Government were inclined to favor. Here we deem it our duty to express our own doubts, as well as those of Lord Stirling, whether the criminal efforts of the crown agents and counsel to destroy his case by tampering with his documents, and suborning corrupt witnesses, could have been known to the Lord Advocate, and to the ministers and higher officers of the British Government. The British Government has in this case refused to do right; but could they have authorized such base and cowardly wrong? Indeed, several of its members have indignantly denied that they had instigated criminal suit, saying that they "knew that Lord Stirling was a perfectly honorable man." Still the Government have been anxious to suppress the exposure of these iniquitous proceedings, which would have thrown so much discredit upon the Crown. They induced Mr. Wallace to withdraw a motion made by him in the British House of Commons in 1839, for a detailed report of the expenses in the Lord Advocate's office for this trial alone, officially reported to be the enormous sum of £16,000, eighty thousand dollars!

Of the conduct of the defence, we speak with that pain which every one must feel when the honor of his profession has been violated. We shrink even from expressing our own convictions, and would seek for some excuse for the management of a cause which seems explicable only by supposing excessive stupidity or bad faith. How, except by conceiving the most painful suspicions, can it be explained that witnesses—some of whom had been brought at immense expense to attend at the trial, who would not only have crushed the case of the prosecution, but have hurled back upon the accusers the charge of fabrication—were not called? We could wish to believe that the leading counsel, Mr. Robertson, seeing the whole power of the Government, and all the weight of the court brought to bear upon his client—seeing him doomed by the remorseless tyranny of the Crown—hoped to avert a portion of this doom by "saving the honor of the Crown, compromised by its agents." Perhaps he felt that he could only save his client's liberty by the sacrifice of his cause, when, instead of manfully defending all the rights which but for him were so impregnably fortified, he abandoned his strong position by such words as these: "Let the visionary coronet of vain ambition be plucked from his bewildered brow; let the visionary prospects of vast possessions and boundless wealth vanish into empty air. * * * On my conscience, I believe him to have been the dupe of the designing, and the prey of the worthless."

Thus the Crown found in the defender's counsel its strongest ally, for certainly all the assaults of Ivory and Meadowbank did not injure Lord Stirling's cause so much as this weak, cowardly, shuffling, temporizing defence.

In England, or in any country where there is any popular strength, a vigorous and manly opposition to the oppression of the Government, in a great cause like this, would have been the foundation of professional success. But in Edinburgh, where there is no large commercial community to keep in its service the best talent of the bar, all the prizes of the profession are the places in the gift of the Crown. And the Government is sure of having no more opposition than is necessary on the part of the opponent to prove that he is worth buying off.

On the first two days of the trial the defence was conducted with vigor and skill. The witnesses for the Crown were submitted to a rigorous cross-examination, and the arbitrary rulings of the court resisted with becoming spirit. But on the third day it was remarked on all sides that after the Crown counsel, and after them the leading counsel for the defence, had been called to the bench, and a long and private communication had passed between the latter and the presiding judge, a deplorable change took place, and the wishes of Lord Stirling and his friends were no longer regarded. What passed in that interview cannot be told. But certain it is that shortly after the trial Lord Meadowbank left the bench, and the advocate who had deserted his client's cause, and who, whether unwittingly or not, had so well served the Crown's interest, and who had said in his speech, "I trample on the tarnished ermine with disdain," was even without going through the ordinary grades, pitchforked to the bench.

It is but just to say, that Lord Stirling has always spoken of his junior counsel with respect and regard. He might not have been wholly free from that influence which pervaded the legal atmosphere of Edinburgh, and doubtless felt himself compelled by the imperative rules of professional courtesy to yield to the leading counsel.

But what shall we say of that modern Jeffreys, the presiding judge, who acted throughout the trial as the "leading counsel of the Crown," (his own words.) Such unblushing prostitution of judicial power to subserve a "political purpose" cannot be instanced in modern times. Every ruling was against the prisoner. In every question to a witness, and the court took a prominent, and what to us seems a most unusual

part in the examination, was calculated to assure the reluctant witness for the Crown, and draw forth stronger evidence against the panel. Resolved, remorseless, straining every fact, torturing every circumstance, he never relaxed from his purpose of doom.

We give some random sentences from his charge:

"I submit to you that it would not be safe to hold that there could be any doubt that this is a fabricated document." "In my opinion, a document liable to such insurmountable objections staring upon the face of it, cannot be genuine." "It is really so manifest that it does not require to be mentioned; that while these documents on the back of the map bears the dates of 1706 and 1707, the map itself did not exist till 1718." "I do not know that in all my life I ever saw anything that tended more conclusively to satisfy my mind of anything than this fact satisfies me that this is an entire fabrication from beginning to end." "Then last of all in regard to this point, we have at the end of the indictment the supposed anonymous letter to Lenormand which must follow the fate of the document itself. You can have no difficulty or ground for doubting that this letter is a forgery also." "The son returns with a map which I am assuming you are to hold to be a fabrication." "And in my mind there does not exist a shadow of a doubt of its being a forged document."

Throughout the whole charge there is not a circumstance, or fact, or question, presented or suggested, to raise a doubt in favor of the prisoner. He gleans every argument or fact bearing against the prisoner which had been omitted by the counsel for the prosecution. We give one instance of the reasoning against the prisoner, thus gleaned up and urged upon the jury, when there was no opportunity of refuting it, which well illustrates the shallowness and falsity of the reasoning (for there were no proofs) against the documents on the map.

Mallet, in the note on the map dated 1706, speaks of the charter of Novo damus as "une ancienne charte," and John Alexander speaking in French of a tradition relative to the loss of certain records sixty years before, calls it "l'ancienne tradition."

Now, every French scholar knows that the words "ancien" and "ancienne" in French are applied to things not only very ancient, but those of comparatively recent occurrence. Thus we should speak of a retired minister as "un ancien ministre"—meaning one formerly such—"une ancienne femme de chambre," or a woman who was formerly a lady's maid But with Lord Meadowbank, the use of this

word was a conclusive proof of the forgery of the document. "I ask you, he says, addressing the jury, whether any mortal man ever heard of "ancient" being applied to a document of sixty years. Can you, by any construction or credulity, believe that such a thing could have taken place?" Speaking of John Alexander's use of the "ancienne tradition:" "Who ever heard of the ancient tradition of a thing that happened forty or fifty years ago?"

Among other ingenious distortions of the presiding Judge, is the statement that a note found pasted on the map after the tombstone inscription which was pasted over it had been removed in court, was an incipient forgery, and had been attempted to be torn off by the forger. Now the fact is, and it is a fact which Lord Meadowbank must have known, that after the note, with the signature and date had been rapidly and indistinctly read to the court, Mr. Cosmo Innes seized the map, and for reasons known only to himself, rapidly *tore off the bottom of the note with the name and date, and crumpling the fragment in his hand, threw it on the floor.* This act was witnessed by several gentlemen in attendance, who, immediately after the adjournment of the court, rushed forward to search for the fragment, but the servants of the court were too quick for them, and had already swept it away; and yet, the Judge tortures this act of the Crown counsel into a proof of the criminality of the accused.

We have said enough to show that the court had already convicted the prisoner before his trial. When we reflect upon the condemnation which public opinion must pronounce upon this unjust judge, how remarkable are the prophetic words of the "philosophical poet, the illustrious ancestor of the accused, in his "Doomesday"—

> Ye judges, ye who with a little breath
> Can ruin fortunes and disgrace inflict,
> Yea, sit securely whilst denouncing death,
> * * Ye shall be judged.

We know of no instance in modern times which illustrates so forcibly, as does this case, the importance of the trial by jury in political causes to preserve the liberty or life of the accused. The jury found by their verdict that Lord Stirling was not guilty, or, according to the Scotch form, it was not proven that he had forged any of the documents. It is true that they were led by the instructions of the court

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Note.—Lord Stirling's poems—Doomesday. The 7th House. English Poets and Translations, vol. v, p. 363.

to find what they had no right to do, and what was wholly unusual, even in Scotland, that some of the documents were not genuine. Still the verdict, illegal as it was, was conclusive as to the genuineness of the only documents which they could understand, documents which completely establish Lord Stirling's pedigree.

While speaking of the jury, we must not omit to mention one incident of the trial, wholly overlooked in the Crown report! After a few only of Lord Stirling's witnesses had been heard, the foreman or chancellor of the jury arose, and addressing the court stated, that the jury saw no necessity for going on with the case, as they had made up their minds to give a verdict for Lord Stirling. The presiding Judge was determined that the panel should not escape. He counted upon the effect of his argument for the Crown, and compelled the jury, in spite of their expostulations, to sit for two days longer to listen to his own and Ivory's implacable assaults.

"When the mutilated verdict was announced, (we adopt the graphic description of the Democratic Review,) there was such a stamping and shouting as yet rings in the ears of all who heard it, from highest to lowest. It drowned the cries and expostulations of the bench, towards which, indeed, it was so menacing that the Chief Justice remained some time afterwards in the building, and retired privately, while the tenant of the dock was made the object of an enthusiastic popular ovation, which, on recovering from a fainting fit, he promptly, but unwisely, declined. The crowd received the Earl of Stirling at the front door of the court with huzzas and waving of hats and handkerchiefs; they unharnessed the horses from his carriage, then before the door, and proposed to draw him themselves back in triumphal procession to his residence, and to his wife and children. He resisted their importunities to the last; but was compelled, for the opposite reason, to address the crowd himself before they would be tranquilized, and left in triumph, followed by hundreds of people, by High street, instead of leaving by the back entrance, from Cowgate, through which the Chief Justice himself ingloriously departed. Conditions had rapidly changed, and retribution seemed to be approaching."

Thus did the accused pass unscathed through an ordeal more fearful than that of fire. Cruelly as he was persecuted, he will yet rejoice at the results of that atrocious trial. For will not our readers say, will not the world say, that this trial is the strongest confirmation of his

rights? Would the Government of a mighty empire have lent itself to crush a pretender, whose fabrications must have been exposed at the first glance of common judicial scrutiny? Would the treasure of the Crown have been lavished as it was; would high officers of State have been created, base falsifiers rewarded, and treacherous advocates clothed with "the tarnished ermine;" would the stronghold of British freedom have been invaded, and the halls of justice violated; would the honor of the crown have been compromised, exposure of all the outrages of this trial risked, if an *imperious necessity* had not demanded the saving, by a "bold stroke," the vast territories to which Lord Stirling had judicially established his right? When the British Government allowed honor and law to be violated to effect their purpose, did they not deliberately proclaim that they had no legal defence to Lord Stirling's claims? Gladly now would they keep this trial out of sight. The English press, which has just responded with so much anxiety to the assertion of Lord Stirling's rights by the American papers, carefully ignore the trial at Edinburgh, and prefer even to fall back upon the deliberate falsehood that Lord Stirling's claims have been rejected by the House of Lords.

But this trial will not be forgotten. It will have its place in history with those of Hampden, Russell, and Sydney. And Lord Stirling, not for his rank or titles, not for his vast claims, but as the victim of political oppression, and as presenting in himself a most significant illustration of the abuses of British power, will most assuredly receive the support and sympathy of the American press and people, and the friends of freedom throughout the world. Enlightened by them, Public Opinion, the mighty tribunal before which even monarchs must bow, will reverse the decisions of unjust courts.

A great wrong cannot endure; "judges may die, and courts be at an end; but JUSTICE STILL LIVES, AND THOUGH SHE MAY SLEEP FOR AWHILE, WILL EVENTUALLY AWAKE, AND MUST BE SATISFIED."—(Paterson, J. 1 Dallas's U. S. Sup. Court Reports, p. 86.)

APPENDIX.

Translation of the Documents in French, upon the back of a map of Canada, by Guillaume De L'Isle, Geographer to King Louis XIV. Published in 1703.

No. I. 17189 & 17190

Note by M. Ph. Mallet.

Lyons, *4th August*, 1706.

During my stay in Acadia, in 1702, my curiosity was excited by what was told me respecting an old Charter, which is preserved in the Archives of that province. It is the Charter of Confirmation, or of "Novo damus," dated 7th December, 1639, by which King Charles the First of England renewed, in favor of William, Earl of Stirling, the titles and dignities which he had previously granted to him, and all the grants of land which had been made to him since 1621, in Scotland and in America. My friend Lacroix caused a copy of it to be given to me, which, before leaving the country, I took the precaution of getting duly attested. From this authentic document I am going to present, in this place, a few extracts, (translated into French for the better understanding of those who do not know Latin,) in order that every person, on opening this map of our American possessions, may form an idea of the vast extent of territory which was granted by the King of England to one of his subjects. If the fate of war, or some other event, should cause New France and Acadia to return under the dominion of the English, the family of Stirling would possess these two provinces as well as New England, "and in like manner the whole of the passages and bounds, as well upon the waters as upon the land, from the source of the river of Canada, in whatsoever place it may be found, to the Bay of California, with fifty leagues of land on each side of the said passage; and further, all the other lands, bounds, lakes, rivers, firths, woods, forests and others, which may be hereafter found, conquered, or discovered by the said Earl or his heirs." Reg. H. fo. 95., E. D. Mar. 1, 1710.

Then follows the order of succession to this inheritance.

1*st*, To the titles of nobility, ("de novo damus," &c.) "to the aforesaid William, Earl of Stirling, and the heirs-male descending of his body, whom failing, to the eldest heirs-female," ("hæredibus femellis natu maximis,") "without division of the last of the aforesaid heirs-male, and the heirs-male descending of the body of the said heirs-female respectively, bearing the surname and arms of Alexander, and failing all these heirs, to the nearest heirs whatsoever of the said William, Earl of Stirling." (Here follow the titles, &c.) 2d. To the territorial possessions, ("de novo damus concedimus, disponimus, proque nobis et successoribus nostris pro perpetuo confirmamus,) "to the aforesaid William, Earl of Stirling, and the heirs-male descending of his body, whom failing, to the eldest of the heirs-female, without division, of the last of the aforesaid males, who shall succeed hereafter to the aforesaid titles, honors, and dignities, and the heirs-male descending of the body of the aforesaid heirs-female respectively bearing the surname and

arms of the family of Alexander, which they shall be held and obliged to assume," &c. Thus the King of England gave to the Earl, and confirmed to his descendants in perpetuity, lands sufficient to form the foundation of a powerful empire in America.

(Signed) PH. MALLET.

On the right hand upper corner of the above document, is a memorandum by King Louis XV, of France, in the following terms:

"This note is worthy of some attention under the present circumstances; but let the copy of the original Charter be sent to me."

Underneath this is the following attestation by M. Villenave:*

"I attest that the four lines above are in the handwriting of Louis XV, and perfectly conformable to the writing of that King, several of whose autograph documents and letters are in my possession.

(Signed) "VILLENAVE."

"PARIS, *this 2d of August*, 1837."

No. II.

NOTE BY M. CARON ST. ETIENNE, A CANADIAN, UNDERNEATH THE NOTE BY M. MALLET.

"The above is a valuable note. I can affirm that it gives, in a few words, an extremely just idea of the wonderful Charter which is referred to. As for the copy of this Charter, it is attested by the Keeper of the Archives and Acadian witnesses; and must be entirely conformable to the Register of Port Royal. I had heard at Quebec persons speak of the grants to the Earl of Stirling, but my friend, M. Mallet, was the first who procured for me a perusal of the Charter. This extraordinary document extends to nearly fifty pages of writing, and the Latin is nothing less than classical; yet, being a Canadian, and, as such, a little interested in what is contained in it, I feel bound to say, that I have read it from beginning to end with as much curiosity as satisfaction. The deceased, M. Mallet, was a man whose good qualities and rare intelligence make it to be regretted that death should have so suddenly carried him off from his friends.

"He had well foreseen that the copy would not make the Charter known in France. On this account, therefore, he formed the project of writing upon one of these beautiful maps of Guillaume De L'Isle a note, that every body might read with interest. If he had lived long enough he would have added to that interest, for he wished to make inquiries in England regarding the actual situation of the descendants of the Earl who obtained the grants, and all that might have been communicated to him respecting them would have been written upon this same map. However, with the two documents that he has left us, no person in France can venture a doubt as to the existence of such a charter.

(Signed) "CARON SAINT ESTIENNE.

"LYONS, *6th April*, 1707."

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* Member of the Institute of France, and one of the greatest collectors of original writings in that kingdom.

No. III.

Attestation by Esprit Flechier, Bishop of Nismes.

"I have lately read, in the house of M. Sartre, at Caveirac, the copy of the Charter of the Earl of Stirling. I remarked in it many curious particulars, mixed up with a great number of uninteresting details. I therefore think that we ought to feel the greatest obligation to M. Mallet for having enabled the French public to judge, by the above note, of the extent and importance of the grants made to this Scotch nobleman. I find also that he has extracted the most essential clauses of the Charter; and, in translating them into French, has given a very correct version of them. M. Caron St. Estienne has requested me to bear testimony to this. I do so with the greatest pleasure.

(Signed) "ESPRIT, Bishop of Nismes.

"*At* Nismes, *this* 3*d of June*, 1707."

Verified by M. Villenave, as follows:

"This attestation is in the handwriting of Esprit Flechier, Bishop of Nismes.

(Signed) "VILLENAVE.

"Paris, 2*d August*, 1837."

The authenticity of M. Villenave's signature is shown by the attestations of the public authorities, viz:

"Seen by us, Mayor of the 11th Arrondissement of Paris, for the legalization of the signature of M. Villenave, (the father,) affixed to the above, and again at the top of this margin.

Seal of the Mayor. (Signed) "DESGRANGES.

"Paris, 2*d August*, 1837."

"Seen, for legalization of the signature of M. Desgranges, placed adjoining to this, by us, Judge, in the absence of the President of the Tribunal of First Instance of the Seine.

Seal of the Tribunal of First Instance of the Dep. of the Seine. (Signed) "SALMON.

"Paris, 3*d August*, 1837."

"Seen, for legalization of the signature of M. Salmon, Judge of the Civil Tribunal of the Seine.

"Paris, 2*d October*, 1837."

"By delegation, the Chief of the Office of the Minister of Justice.

Seal of the Keeper of the Seals of France. (Signed) "PORET."

"The Minister of Foreign Affairs certifies to the truth of the annexed signature of M. Poret."

"Paris, 2*d October*. 1837."

"By authority of the Minister, the Chief of the Office of Chancery.

Seal of the Minister of Foreign Affairs. Gratis. (Signed) "DE LAMARRE."

"Seen, for legalization of the annexed signature of M. De Lamarre, Chief of the Office of Chancery in the Department of Forign Affairs."

"Paris, *4th October*, 1837.

"The Consul of her Britannic Majesty at Paris.

Seal of Her Britannic Majesty's Consul at Paris.

(Signed) "THOMAS PICKFORD."

No. IV.

Autograph Letter*, Mr. John Alexander, (grandson of the celebrated Earl of Stirling,) to the Marchioness de Lambert.

Seal of the Keeper General of the archives of the Kingdom.

"*From* Antrim, *the 25th August*, 1707.

"It would be impossible for me to express, Madam, how very sensible I am of the honor of your remembrance. I must also sincerely thank M. de Cambray,† since it was he who facilitated the journey of my friend, Mr. Hovenden, and by that means was the cause of your letter, and the copy you have had the kindness to send to me of the note respecting the charter of my grandfather, being so quickly put into my hands. I will answer in the best way I can the questions you put to me.

"I am not, as you thought, heir to the titles of my family. Our chief at present is Henry, 5th Earl of Stirling, descended of the third son of my grandfather. He lives some miles from London, has no children; but he has brothers, the eldest of whom is his presumptive heir. Of the first son there remain only the descendants of his daughters. The second left no children. My father was the fourth son. He married, to his first wife, an heiress of the house of Gartmore, in Scotland. My mother, of the family of Maxwell, was his second wife; but although he had daughters by the first, he never had any other son but myself. In order to finish this family genealogy, I must tell you, Madam, that my wife is a cadet of that of Hamilton, a ducal house in Scotland, and that she has given me a son, named John, after my father and myself, and two daughters. I have so little idea at present that the titles and estates of Stirling can fall to my children, that I have encouraged my son's inclination for the ministry of our church of Scotland, and he is preparing himself for it in Holland, at the University of Leyden.

"I shall carefully preserve the interesting note of M. Mallet. The charter was registered at one period in Scotland, as well as in Acadia; but pending the Civil War and the usurpation of Cromwell, some chests containing a part of the records of this kingdom were lost at sea during a storm; and, according to the ancient tradition of our family, the register in which this charter had been inscribed was of the number of those that were lost.

"This, Madam, is all that I am able to say in answer to your questions, for it is impossible in this country of Ireland to obtain any other information respecting the registered charter. I believe my grandmother had given *the original charter*, (which she brought from Scotland, on coming to settle in Ireland,) to her son-in-law, Lord Montgomerie, in order that he might keep it with care in Castle Comber, where he lived. I will inquire what this family may have done with it; and if I make any discovery, I shall have the honor to inform you.

---

* These lines are written upon a stripe of paper pasted on the map above the letter, which is also pasted upon the map.

† The Archbishop of Cambray.

"Never shall I forget, Madam, your kindness to me, nor the charms of the society I always found at your house. So long as I live I shall be attached to you with the most respectful devotedness.

(Signed) "JOHN ALEXANDER."

Partly upon the margin, and partly below the signature of this letter, is the following note by Fenelon, Archbishop of Cambray:

"The friends of the deceased, M. Ph. Mallet, will read, no doubt with much interest, this letter from a grandson of the Earl of Stirling. M. Cholet, of Lyons, setting off this day, 16th October, 1707, to return home, will have the honor to deliver it to M. Brossette,* by the desire of Madame de Lambert.

"In order to authenticate it, I have written and signed this marginal note.

(Signed) "FR. AR. DUKE OF CAMBRAY."

"Seen by us, keeper general of the archives of the kingdom, for the verification of the signature, *Fr. Ar. Duke of Cambray*, and of the writing of the six lines which precede it, which lines are placed, namely, the three first upon the margin, and the three last at the bottom of a letter signed *John Alexander*, dated 25th August, 1707.

"We have recognised the writing of the six lines, and the signature which follows them, as being conformable to the writing and to the signature of a letter of Fenelon, Archbishop of Cambray, dated 21st December, 1703, and deposited in the historical section of the archives of the kingdom, series M, No. 928.

"In faith of which, we have signed, and caused the seal of the said archives to be affixed, on the one part, upon the document which contains the writing of Fenelon, and, on the other, upon the back of the map of Canada, upon which this document is pasted.

PARIS, *27th July*, 1837.

Seal of the Keeper General of the Archives of the Kingdom.

(Signed) "DAUNOU."

"Seen by us, Mayor of the 7th Arrondissement, for the legalization of the signature of M. Daunou, (affixed above,) keeper general of the archives of the kingdom.

"PARIS, *4th August*, 1837.

Seal of the Mayor of the 7th Arrond.

(Signed) "LECOQ."

"Seen, for the legalization of the signature of M. Lecoq, Mayor adjunct of the 7th Arrondissement, by us Judge, in the absence of the President of the Tribunal of First Instance of the Seine.

"PARIS, *4th August*, 1837.

Seal of the Tribunal of First Instance of the Dep. of the Seine.

(Signed) "H. DE ST ALBIN."

"Seen, for the legalization of the signature of M. de St. Albin, Judge of the Civil Tribunal of the Seine.

PARIS, *2d October*, 1837.

"By delegation, the Chief of the Office of the Minister of Justice.

Seal of the Keeper of the Seals of France.

(Signed) "PORET."

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* A counsellor at Lyons, and a man of learning.

"The Minister of Foreign Affairs certifies to the truth of the annexed signature of M. Poret.

"PARIS, 2*d October*, 1837.

"By authority of the Minister, the Chief of the Office of Chancery.

Seal of the Minister of Foreign Affairs.

Gratis. (Signed) "DE LAMARRE."

"Seen, for the legalization of the annexed signature of M. de Lamarre, Chief of the Office of Chancery in the Department of Foreign Affairs.

"PARIS, 4*th October*, 1837.

"The Consul of her Britannic Majesty at Paris.

Seal of Her Britannic Majesty's Consul at Paris.

(Signed) "THOMAS PICKFORD."

No. V.

"Seal of and part of Arms of J. Alexander, of Antrim. Mr. John Alexander, the envelope of his letter."

No. VI.

Inscription to the Memory of Mr. John Alexander, of Antrim.

(In English)

This copy Inscription, and Mr. Gordon's certificate subjoined, are pasted on the Map.

Here lieth the Body of
John Alexander, Esquire,
Late of Antrim,
The only Son of the Honorable Iohn Alexander,
Who was the fourth Son of that Most Illustrious
And famous Statesman,
William, Earl of Sterline,
Principal Secretary for Scotland,
Who had the singular merit of planting at his
Sole expense, the first Colonie in
Nova Scotia.
He married Mary, Eldest Daughter of the
Rev. Mr. Hamilton, of Bangor,
By whom he had issue one son, Iohn, who,
At this present time, is the Presbyterian Minister
At Stratford-on-Avon, in England,
And two Daughters,
Mary, who survives, and Elizabeth, Wife of
Iohn M. Skinner, Esquire, who died 7th Jan., 1710-'11,
Leaving three Children.
He was a man of such endowments as added
Lustre to his noble descent, and was universally
Respected for his Piety and Benevolence.
He was the best of Husbands:
As a Father, most Indulgent: As a Friend,
Warm, Sincere, and Faithfull.
He departed this Life
At Templepatrick, in the County of Antrim,
On the 19th day of April, 1712.

This is a faithfull copy of the Inscription to the memory of John Alexander, Esquire, upon the tablet over his tomb at Newtoun-Ardes, county of Down, Ireland.

W. C. GORDON, Jun.

Stratford-upon-Avon, *Oct.* 6, 1723.

No. VII.

Note underneath No. VI.*

"This inscription was communicated by Madame de Lambert. Since the death of Mr. Alexander, in 1712, this lady has not ceased to give marks of her kindness and friendship to the son of that distinguished man. The son is advantageously known in England as a minister of the Protestant worship, and as a learned philologist. In the knowledge of the Oriental languages he is almost without competitors. He is at the head of the College for the Education of Young Ministers, established at Stratford, in the county of Warwick."

* Drawn up and written, it is supposed, by M. Brossette.

DOCUMENTS

Authenticated by the aged Solicitor of the family and other gentlemen, and found by the Jury to be genuine.

No. I.

Anonymous Note to the Defender.

The enclosed was in a small cash-box, which was stolen from the late William Humphreys, Esq. at the time of his removal from Digbeth-house, Birmingham, to Fair Hill. The person who committed the theft was a young man in a situation in trade which placed him above suspicion. Fear of detection, and other circumstances, caused the box to be carefully put away, and it was forgot that the packet of papers was left in it. This discovery has been made since the death of the person alluded to, which took place last month. His family being now certain that the son of Mr. Humphreys is the Lord Stirling who has lately published a narrative of his case, they have requested a lady, going to London, to leave the packet at his Lordship's publishers, a channel for its conveyance pointed out by the book itself, and which they hope is quite safe. His Lordship will perceive that the seals have never been broken. The family of the deceased, for obvious reasons, must remain unknown. They make *this* reparation, but cannot be expected to court disgrace and infamy.

April 17, 1837.

This note was opened in my presence, and found to contain the packet superscribed,

'Some of my Wife's
'Family Papers,'

sealed with three black seals bearing the same impression.

London, 22*d April*, 1837. Wm. Scorer, Public Notary.

Witness, Edw. Francis Fennell, Solicitor, 32, Bedford Row, London.

No. II.—*Reduced Emblazoned Pedigree of the Earls of Stirling.*

No. 35.

Part
of the Genealogical Tree
of the
ALEXANDERS of Menstry,
EARLS OF STIRLING in Scotland,
shewing
only the fourth and now existing
Branch.
Reduced to pocket size from the
large emblazoned Tree in the
possession of Mrs. ALEXANDER,
of King Street, Birm.
By me,
THOS CAMPBELL.
April 15, 1759.

JOHN, Eldest Son, Born, at Dublin, in 1736, heir to the Titles & Estates.

BENJAMIN, 2nd Son, Born at Dublin in 1737.

MARY, Eldest Daŭr. Born at Dublin, in 1733.

HANNAH, 2nd Daŭr, Born at Dublin, in 1741.

JOHN, 6th Earl of Stirling, (De Jure,) Md Hannah Higgs, of Old Swinford. Died at Dublin, Nov. 1, 1743, Aged 57. Burd there.

MARY, Eldest Daŭr. Born in 1683, Died unmar'd.

ELIZABETH, Born 1685, Md J. M. Skinner Died 1711, leaving issue.

JOHN, Marry'd Mary Hamilton of Bangor, Settled at Antrim after living many years in Germany. Died 1712. Burd at Newtown.

JANET, only Surviving Child of the heiress of Gartmore.

JOHN, 4th Son—Marry'd 1. Agnes Graham, heiress of Gartmore. 2. Elizabeth Maxwell, of Londonderry. Settled in Ireland in 1646. Died 1665.

WILLIAM, 1st Earl of Stirling, B. 1580. M. Janet Erskine. Had issue, 7 Sons and 3 Daŭrs. Died 1640. Burd at Stirling.

No. III.

Letter, *Dr. Benjamin Alexander to Rev. John Alexander of Birmingham.*

Rev[d] Mr Alexander, Birmingham.

Dear Bro[r],

Mr Palmer is not at home, but I will take care of the letter. I have but little time to write at present, yet, as Mr Solly is going to-night, and offers to take this, I must tell you, Campbell has written to me. The report we heard last year about the agents of W. A. is too true. No other copy of the inscription can be had at Newtown. The country people say, they managed one night to get the slab down, and 'tis thought they bury'd it. However, C. does not think you need mind this loss, as Mr Littleton's copy can be proved. Mr Denison tells Campbell, his copy of grandfather A.'s portrait will be very like when finished. At the back of the original, old Mr Denison pasted a curious mem., from which it appears, that our grandfather rec[d] his early education at Londonderry, under 'the watchful eye of Mr Maxwell, his maternal grandsire.' At the age of sixteen, the Dowager-Countess wished him to be sent to Glasgow College; but at last it was thought better for him to go to a German university. He attained high distinction as a scholar, remained many years abroad, and visited foreign courts. Please to give duty and love to Mamma, love to sisters, and be yourself healthy and content.

Y[r] affectionate Bro[r],

Lond. Aug[t] 20, 1765. B. Alexander.

No. IV.

A Letter, *A. E. Baillie to Rev. John Alexander of Birmingham.*

For Rev. Mr Jn[o] Alexander.

Rev. Sir, *Dublin, Sept.* 16, 1765.

I was sorry to hear of y[e] lawless act at Newton, but as I tell Mr Denison, I shall be ready to come forward if you want me. I was about twenty-one when I attended y[r] grandfather's funerall. He was taken ill while visitting a friend at Templepatrick, and dyed y[re], for he cou'd not be removed. Mr Livingstone, a verry old friend of y[r] family, wrote y[e] inscription, w[h] y[e] claimant from America got destroyed. I always heard y[t] y[r] great gr. father, y[e] Hono[ble] Mr. Alexander, (who was known in the country as Mr. Alexander of Gartmoir), dyed at Derry: but for y[e] destruction of y[e] parish registers in the north by y[e] Papists, during y[e] civil war from 1689 to 1692, you mit have got y[e] certificates you want.

I am w[th] Friend Denison till October; so if you have more questions to put to me, please to direct to his care. Till then,

I remain, Rev[d] Sir, Y[rs] respectfully,

A. E. Baillie.

No. V.

Letter, *Dr Benjamin Alexander to Mrs Alexander, King Street, Birmingham.*

To Mrs. Alexander, King Street, Birmingham.

Hon[d] and D[r] Mamma,

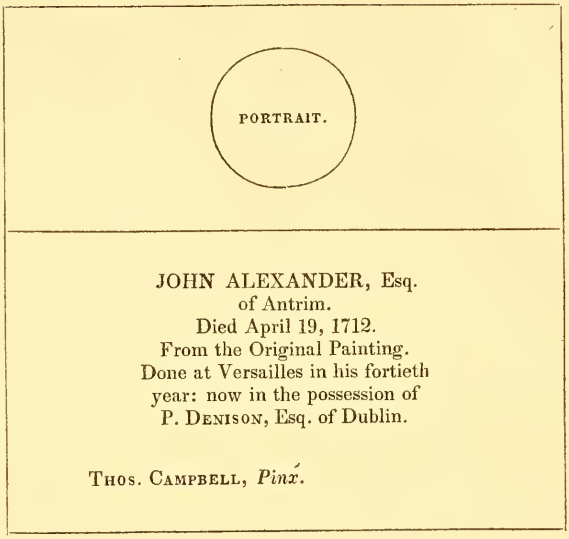
Received y[r] letter yesterday by Mr Kettle. I write instantly to prevent more mischief. Take no physic any body—foolish practice to weaken constitutions for a foolish rash—let it go off as it will—don't you see how it has hurt Mary? Let sister Hannah take antimonial wine, thirty or forty drops twice a-day. This will carry off the rash by perspiration, and safely. I send you the portrait of gr. father Alexander, which Campbell did for Bro[r]. Sisters never saw it. C. says we can't recover Gartmo
The other Scotch property went to
half sister to my gr[d]father, but w
succeed in Ireland if we begin soon
It will be now necessary to pay Campbell's bill. It comes to two and twenty pounds thirteen shill[s]. Let me know in yo[r] next how you propose furnishing the money.

I am, in great haste, and with
love to sisters, y[r] dutif. and
affec Son

Lond., July 26 1766. B. Alexander.

No. VI.

Note *on Back of Copy Portrait of Mr. John Alexander of Antrim*



Note. (On the back.)

Mr Denison believes my g^{t} gr. father lost his first wife, Agnes, in 1637, and that he met Miss Maxwell at Comber, and was marr^{d} to her in 1639. If so, and my gr. father the next year made his appearance in this world, we may suppose the original portrait was painted in 1679. B. A.

HERE LIETH THE BODY OF JOHN ALEXANDER ESQUIRE, LATE OF ANTRIM, THE ONLY SON OF THE HONOURABLE JOHN ALEXANDER, WHO WAS THE FOURTH SON OF THAT MOST ILLUSTRIOUS AND FAMOUS STATESMAN, WILLIAM EARL OF STERLING, PRINCIPAL SECRETARY FOR SCOTLAND; WHO HAD THE SINGULAR MERIT OF PLANTING AT HIS SOLE EXPENSE, THE FIRST COLONIE IN NOVA SCOTIA.

HE MARRY'D MARY ELDEST DAUGHTER OF THE REV. MR HAMILTON OF BANGOR, BY WHOM HE HAD ISSUE ONE SON JOHN, WHO AT THIS PRESENT TIME IS THE PRESBYTERIAN MINISTER AT STRATFORD ON AVON IN ENGLAND AND TWO DAUGHTERS, MARY, WHO SURVIVES, AND ELIZABETH WIFE OF JOHN M. SKINNER ESQUIRE, WHO DIED 8th JAN 1710-11 LEAVING THREE CHILDREN.

HE WAS A MAN OF SUCH ENDOWMENTS AS ADDED LUSTRE TO HIS NOBLE DESCENT, AND WAS UNIVERSALLY RESPECTED FOR HIS PIETY AND BENEVOLENCE. HE WAS THE BEST OF HUSBANDS; AS A FATHER MOST INDULGENT AS A FRIEND WARM, SINCERE AND FAITHFULL. HE DEPARTED THIS LIFE AT TEMPLEPATRICK, IN THE COUNTY OF ANTRIM ON THE 19th DAY OF APRIL 1712.

* Note

Cette description a esté communiquée par Made de Lambert. Depuis la mort de Monsieur Alexander en 1712 cette dame n'a pas cessé de donner des marques de sa bienveillance et de son amitié au fils de cet homme distingué. Ce fils est connu avantageusement en Angleterre comme Ministre du culte protestant et comme savant philologue dans la connoissance des langues de l'Orient il est presque sans competiteurs. Il est à la teste du Collège pour l'éducation des jeunes Ministres établi à [illegible] dans le Comté de Warwick.

Cachet de Mr John Alexandre a portion de l'enveloppe de sa lettre

Lettre autographe de John Alexander (petit fils du Comte de Stirling) à Madame de Lambert.

Antrim le 25me Aoust 1707

[illegible]

Mr Broglie de la part de Madame de Lambert.

John Alexander *

Pour l'authentiquer j'ai écris et signé cette apostille
Fr. Ar. Duc de Cambray

Vu par Nous Garde Général des Archives du Royaume pour la vérification de la signature Fr. Ar. duc de Cambray et de l'écriture des six lignes qui la précèdent, lesquelles lignes sont placées, savoir: les trois premieres sur la marge et les trois dernieres au bas d'une lettre signée John Alexander et en date du 25 Aout 1707. Nous avons reconnu que l'écriture de ces six lignes et la signature qui les suit sont conformes à l'écriture et à la signature d'une lettre de Fénélon, archevêque de Cambray en date du 21 décembre 1703 et déposée à la section historique des Archives du Royaume Série M n° 928.

En foi de quoi nous avons signé et fait apposer le sceau des dites Archives d'une part sur la pièce qui renferme l'écriture de Fénélon et de l'autre sur le revers de la carte du Canada à laquelle cette pièce a été collée.

Paris le [illegible] juillet mil huit cent trente sept.

Daunou

Vu par nous Maire du 7e arrond^t pour légalisation de la signature de M. Daunou (ci-dessus apposée) garde général des archives du Royaume. Paris ce 4 aout 1837.

CARTE
DU CANADA
OU DE LA
NOUVELLE FRANCE,
et des Decouvertes qui y ont été faites
Dressée sur plusieurs Observations
et sur un grand nombre de Relations imprimées ou manuscrites
Par Guillaume Del'Isle
de l'Academie Royale des Sciences
et Premier Geographe du Roy
A PARIS
chez l'Auteur sur le Quai de l'Horloge a l'Aigle d'Or
avec Privilege de sa Maj. pour 20 ans
1703.

Vu pour légalisation de la signature ci-dessus de Mr Dhaumane Chef du Bureau de la Chancellerie au Département des Affaires Étrangères — Paris ce quatre Octobre 1837
Le Consul de Sa Majesté Britannique à Paris
Thomas Pickford

Le Ministre des Affaires Étrangères certifie véritable la signature ci-contre de Mr Foret. Paris le 2 8bre 1837. Par autorisation du Ministre Le Chef du bureau de la Chancellerie
Dhaumane

1739 & 1740

à Lyon ce 4 Aoust 1706

Pendant mon séjour en Acadie en 1702 ma curiosité fut piquée par ce que l'on me disoit d'une ancienne Charte qui est conservée dans les archives de cette Province - c'est la charte de confirmation, "de novo damus" en datte du 7 Décembre 1639, par laquelle le Roy Charles Ier d'Angleterre renouvella en faveur de Guillaume Comte de Stirling les titres et dignitez qu'il luy avoit précédemment accordés et toutes les concessions de terres qu'il luy avoit faites depuis 1621 en Ecosse et en Amérique. Mon amy [illegible] me fit donner une copie que j'eus la précaution avant de partir de faire dûement attester. De cette pièce authentique je vais présenter icy quelques extraits (traduits en françois pour l'intelligence de ceux qui n'entendent pas le latin) afin que toute personne en ouvrant cette carte de nos possessions d'Amérique puisse se faire une idée de la vaste étendue de territoire qui fut concédé par le Roy d'Angleterre à un de ses sujets. Si le sort de la guerre ou quelque autre événement faisoit rentrer la Nouvelle France et l'Acadie sous la domination des Anglois la famille de Stirling posséderoit ces deux Provinces ainsi que la Nouvelle Angleterre "et également la totalité des passages et limites tant sur les eaux que sur les terres depuis la source de la rivière du Canada en quelqu'endroit qu'on puisse la trouver jusqu'à la baye de Californie, avec cinquante lieues de terres de chaque costé du dit passage - et de plus toutes les autres terres, limites, lacs, rivières, détroits, bois, forêts et autres qui pourront estre à l'avenir trouvés, conquis, ou découverts par le dit Comte, ou ses héritiers" — Voicy enfin l'ordre de succession à cet héritage. 1° aux titres de noblesse ("de novo damus" etc.) au susdit Guillaume Comte de Stirling et aux héritiers mâles descendant de sa personne à leur défaut aux aînées des héritières" (heredibus femellis natu maximis) "sans division du dernier des susdits héritiers mâles, et aux héritiers mâles descendant de la personne des dites héritières respectivement, portant le surnom et les armes d'Alexander, et au défaut de tous ces héritiers aux plus proches héritiers quelconques du dit Guillaume Comte de Stirling" (Icy suivent les titres, etc) 2° aux possessions territoriales ("de novo damus, concedimus, disponimus, prorogue nobis et successoribus nostris pro perpetuo confirmamus) "au susdit Guillaume Comte de Stirling et aux héritiers mâles descendant de sa personne: - à leur défaut aux aînées des héritières, sans division du dernier des susdits mâles qui succèdera cy-après aux susdits titres, honneurs et dignitez, et aux héritiers mâles descendant de la personne des susdites héritières respectivement, portant le surnom et les armes de la famille Alexander, qu'ils seront tenus et obligés de prendre" etc. etc. Ainsi le Roy d'Angleterre a donné un Comté et a assuré à ses descendants en perpétuité assez de terres pour fonder un puissant Empire en Amérique.

Ph. Mallet

Roy^l A.
fo. 95
E. S.

1 Sean 1710.

Cette note est digne de quelque attention dans les circonstances présentes mais qu'on n'envoie la copie de la charte originale.

J'atteste que les quatre lignes ci-dessus sont de la main de Louis XV ... conformes à l'écriture de ce Roi ... autographes ... Paris 2 aout 1837
Villenave

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La Notte cy-dessus est precieuse. Je puis asseurer qu'elle donne en peu de mots une idée extremement juste de la merveilleuse charte dont il est question. Quant à la copie de cette charte elle est attestée par l'Archiviste et les témoins Acadiens et doit estre entierement conforme au registre du Port Royal. J'avois entendu parler à Quebec des concessions au Comte de Stirling, mais mon amy Mr Mallet fut le premier qui me procura lecture de la charte. Ce document extraordinaire s'estend à près de cinquante pages d'écriture et le latin rien moins que classique: cependant comme j'en estois un peu intéressé en ce qu'il y avoit dedans je dois dire que je l'ay lu d'un bout à l'autre avec autant de curiosité que de satisfaction. Feu Mr Mallet estoit un homme dont les bonnes qualitez et la rare intelligence font regretter que la mort l'a enlevé si subitement à ses amis. Il avoit bien prouvé que la copie ne feroit point connoistre la charte en France. Voyla donc pourquoy il conceut le projet d'escrire sur une de ces belles cartes de Guillaume de l'Isle une Notte que tout le monde peut lire avec interest. S'il avoit vescu assez long-temps il auroit adjousté à cet interest, car il vouloit s'informer en Angleterre de l'estat actuel des descendants du Comte qui obtint les concessions et tout ce qu'on luy auroit mandé à leur égard auroit esté escrit sur cette mesme carte. Au surplus avec les documents qu'il nous a laissés personne en France ne pourra revoquer en doute l'existence d'une telle charte.

A Lyon le 6 Avril 1707

Caron Saint Estienne

J'ay lu dernierement chez Monsieur Sartre a Caveirac la copie de la charte du Comte de Stirling. J'y ay remarqué beaucoup de particularités curieuses, entremeslées d'un grand nombre de détails peu interessants. Je pense donc qu'on doit avoir de grandes obligations a Monsieur Mallet d'avoir mis le public françois en estat de juger, par la Note cy-dessus, de l'estendue & de l'importance des concessions faites a ce seigneur Ecossois. Je trouve aussi qu'il a extrait les clauses les plus essentielles de la charte & en les traduisant en françois les a tres bien rendues. Monsieur Caron Saint Estienne m'a prié de rendre ce témoignage. Je le fais avec le plus grand plaisir.

Esprit Ev. de Nismes

a Nismes ce 3 Juin 1707

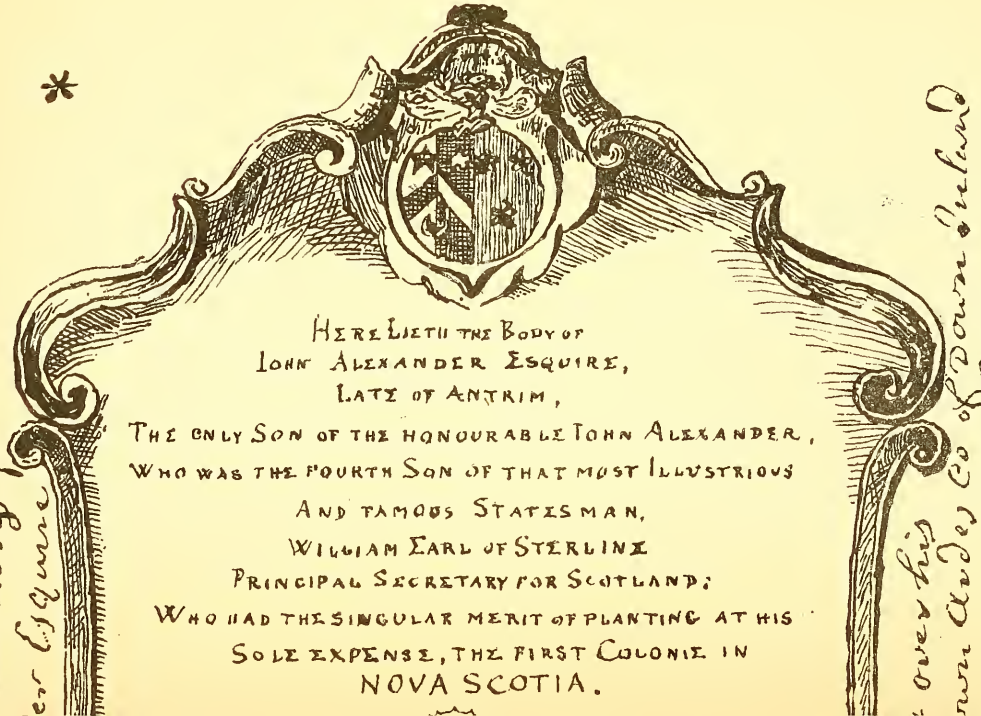
Cette attestation est de la main d'Esprit Fléchier, évêque de Nismes. Paris 2 aout 1837
Villenave

Vu pour nous, maire du [illegible] arrondissement, pour légalisation de la signature de M. Villenave [illegible] et encore au haut de cette marge. à Paris le deux août 1837.
D'Aygrange

Vu pour légalisation de la signature de Mr Salmon, Juge au tribunal civil de la Seine. Paris 2 8bre 1837.

Vu pour légalisation de la signature de M. Desgranges opposée ... Paris le trois aout 1837.

66.


HERE LIETH THE BODY OF
IOHN ALEXANDER ESQUIRE,
LATE OF ANTRIM,
THE ONLY SON OF THE HONOURABLE IOHN ALEXANDER,
WHO WAS THE FOURTH SON OF THAT MOST ILLUSTRIOUS
AND FAMOUS STATESMAN,
WILLIAM EARL OF STERLINE
PRINCIPAL SECRETARY FOR SCOTLAND;
WHO HAD THE SINGULAR MERIT OF PLANTING AT HIS
SOLE EXPENSE, THE FIRST COLONIE IN
NOVA SCOTIA.

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